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Food and Drug Administration

Endangered and Threatened Species
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Energy Conservation
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Equal Employment Opportunity
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Surface Mining Reclamation and Enforcement Office

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.
Title 3—

The President

Proclamation 5289 of December 27, 1984

National Cerebral Palsy Month, 1985

By the President of the United States of America

A Proclamation

For more than 700,000 Americans with cerebral palsy, life is a struggle to overcome the challenges posed by brain abnormalities present since very early in life, often before birth. As cerebral palsy victims mature, they must confront lack of movement control and, possibly, seizures, loss of hearing, vision, or other senses, or mental or emotional impairment. This year, nearly 7,000 children will be born with cerebral palsy.

Health care professionals and educators throughout our Nation are making bold strides in helping those affected to deal with this disorder. Through physical rehabilitation and occupational therapy, many cerebral palsy patients are learning to lead happy, productive lives in the mainstream of society. These efforts have been spearheaded by two voluntary health agencies, the United Cerebral Palsy Associations, Inc. and the National Easter Seal Society.

Investigators supported by the National Institute of Neurological and Communicative Disorders and Stroke and by voluntary health agencies are developing new drugs and devices to alleviate the symptoms of cerebral palsy. Scientists also are learning how to prevent the disorder, particularly with closely monitored prenatal care to minimize risks to the developing child. With the combined efforts of concerned voluntary and public health agencies, the tragedy of cerebral palsy can be substantially reduced.

To encourage public recognition of and compassion for the complex problems caused by cerebral palsy, the Congress, by Senate Joint Resolution 309, has designated the month of January 1985 as "National Cerebral Palsy Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of January 1985 as National Cerebral Palsy Month. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this month with appropriate ceremonies and activities.

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

[Signature]

Ronald Reagan
The Code of Federal Regulations is sold in general applicability and legal effect, most contains regulatory documents having this.

Program Activity Statement. The FNS-366A, SUMMARY: This ACTION: Food Stamp Program; Budget Activity 276,278, 7

Prices by U.S.C. 1510. of which are classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this final rule will not affect the business community, it will not result in 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.

Regulatory Flexibility Act

The rule also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The information requirements contained in §272.2(c) have been approved by the Office of Management and Budget under the provisions of 5 U.S.C. Chapter 35 and have been assigned OMB #0584-0093.

Final Rule

The Department has determined, in accordance with §5 U.S.C. 553(b)(1), that there is good cause that notice of proposed rulemaking and public comment procedures prior to the effective date of this rule are unnecessary and contrary to public interest. Moreover, good cause exists to make this rule effective on publication pursuant to 5 U.S.C. 553(d). First, the amendments in this final rule provide the accounting flexibility needed to change the identified areas of program operations for which costs are solicited from State agencies without requiring further regulatory amendments. Second, this rule corrects errors in previous rulemakings and makes amendments to conform with previously issued Food Stamp regulations. Third, the rule conforms existing regulations with provisions of the Food Stamp Act that provide that FNS does not have the authority to provide advance approval for State handbooks, forms, and other documents.

DEPARTMENT OF AGRICULTURE
Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 275, 276, 278, and 279

[Amendment No. 262.]

Food Stamp Program; Budget Activity Forms and Corrections to Food Stamp Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule: Amendments and corrections.

SUMMARY: This rulemaking sets forth a change in the manner in which program information may be requested on Form FNS-365A, the Budget Projection Statements and Form FNS-366B, the Program Activity Statement. The amendments will provide FNS the flexibility needed to change the identified areas of program operations for which costs are solicited from State agencies on Form FNS-365A and activities reported on Form FNS-366B, without requiring further regulatory amendment. In addition, this rulemaking corrects erroneous citations and minor typographical errors which appeared in the February 17, 1984 Federal Register at 49 FR 6292, the August 15, 1984 Federal Register at 49 FR 32533 and the October 3, 1984 Federal Register at 49 FR 39035 and deletes references to FNS approval of State forms and manuals.

EFFECTIVE DATE: This regulation is effective December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Keith Spinner, Supervisor, State Agency Management and Control Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, USDA, Alexandria, Virginia 22332; (703) 759-3431.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this final rule will not affect the business community, it will not result in 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.

Introduction

The Department published a final rule on February 11, 1983 (48 FR 6313) which, among other purposes, implemented Sections 165 and 165 of the 1982 Food Stamp Act Amendments. Section 165 mandated that the Secretary of the Department of Agriculture not require prior FNS approval of the Change Report Form. Section 165 mandated that the Secretary not require a State agency to submit for prior approval the State agency instructions to staff, interpretations of existing policy, methods of administration, forms, or any materials, memoranda, documents, bulletins, or other matters. Although the principle references to prior FNS approval of forms and instructions were amended in that rulemaking, several related references throughout the Food Stamp regulations were overlooked. This rulemaking identifies and corrects those other references in the following sections: 271.2 (the definition of deficiency), 272.3(a)(1) and (b)(1), 272.4(d)(2)(i), 273.12(b)(1), (f)(1) and (2)(ii)(ii), 273.14(b)(5), 274.1(e)(5), 275.5(a), 275.8(a) and (b)(1)(i), 275.14(a) and 276.3(b). One of these references will necessitate changes to the Federal/State Agreement. Under the current regulations, the Federal/State Agreement may be modified with the mutual consent of both parties. We have modified this language to require that this consent be in writing. However, it will not be necessary for new signed Federal/State Agreements to be submitted. The State agency need only submit the current agreement with pen and ink corrections to the FNS Regional Office with a letter agreeing to the changes.

The Budget Projection Statement, Form FNS-365A currently requires that
each State agency provide estimates of its total program operating costs allocated among ten categories: certification, issuance, performance reporting, fair hearings, outreach, training, ADP development, ADP operations, fraud control, and all other direct and indirect Program costs. The Program Activity Statement, Form FNS-366B requires that each State agency provide data on the number of eligibility determinations, fair hearings, and fraud control activities. The FNS 366A and B are the primary means through which each States report to FNS on how they anticipate budgeting their administrative funding in the coming fiscal year and what activity level was funded by the prior year's budget. Over time, the management focus within FNS and the States will change, necessitating a shift in emphasis on program areas deserving particularized attention. As the basic purpose of these forms will not change, but only an occasional substitution among specific program areas, the need to go through rulemaking to announce these changes is not warranted.

Therefore, the Department has simplified the current regulations by deleting the references to the specific areas on which data are requested and substituting a general statement of the purpose of these reports. Therefore, 7 CFR Parts 272, 273, and 275 have been amended to provide FNS the flexibility needed to change the areas of program operations for which costs and activities are solicited by modifying the FNS designed forms.

In addition, this rule corrects citations and other typographical errors in 49 FR 6292, 49 FR 32333 and 49 FR 39035; deletes the requirement that State agency manuals be available for public inspection at the National office level; and more concisely states the definitions of negative error, negative case error rate and variance and reflects changes made through notice and comment rulemaking (Quality Control regulations, 49 FR 6292, February 17, 1984) and current procedures which accommodate the mechanics of monthly reporting and deletes an exemption from voluntary quit and changes a reference to the treatment of household members who fail to comply with comparable work requirements, to conform with the changes published October 3, 1984 at 49 FR 39035.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Records, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

7 CFR Part 277

Administrative practice and procedure, Banks, Banking, Clams, 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 271, 272, 273, 274, 275, 276, 278 and 279 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

In § 271.2, the last sentence of the definition of "error" is revised and the definitions of "deficiency," "negative case error rate" and "variance" are revised. The revisions read as follows:

7 CFR Part 271 Definitions.

"Deficiency" means any aspect of a State's program operations determined to be out of compliance with the Food Stamp Act, FNS Regulations, or program requirements as contained in the State agency's manual, the State agency's approved Plan of Operation or other State agency plans.

"Error" means for negative cases, an "error" means that the reviewer determines that the decision to deny or terminate a household was incorrect.

"Negative case error rate" means an estimate of the proportion of denied or terminated cases where the household was incorrectly denied or terminated. This estimate will be expressed as a percentage of completed negative QC reviews excluding those cases denied based upon processing by SSA personnel or denied/terminated based upon the rules of certain demonstration projects.

"Variance" means the incorrect application of policy and/or a deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, the second sentence of paragraph (d)(1) is revised to read as follows:

§ 272.1 General terms and conditions.

(d) Information available to the public. (1) * * * State agency handbooks shall be available for examination upon request at each local certification office within each project area as well as at the State agency headquarters and FNS Regional offices.

2. In § 272.2:

a. the fifth sentence of paragraph (a)(2) is revised:

b. paragraph (b) is revised in its entirety;

c. the first sentence of paragraph (c)(1)(ii) is revised:

d. paragraph (c)(1)(i) is revised.

The changes read as follows:

§ 272.2 State Plan of Operation.

(a) General Purpose and Content. * * *

(2) Content. * * * This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act and the FNS-approved State Plan of Operations. * * *

(b) Federal/State Agreement. (1) The wording of the pre-printed Federal/State Agreement is as follows:
accompany with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations and the FNS-approved State Plan of Operation. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

Provisions

The State agree to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act and to implement the FNS-approved State Plan of Operation.

2. Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), section 11(c) of the Food Stamp Act of 1977, as amended, the Age Discrimination Act of 1975 (Pub. L. 93-135) and the Rehabilitation Act of 1973 (Pub. L. 93-112, Sec. 504) and all requirements imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under these Acts by the Department of Agriculture.

3. For States with Indian Reservations only. Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food Stamp Act of 1977, as amended.

3. Submit summary of program activity for the Program Activity Statement, to be submitted annually, solicits a projection of the total costs for major areas of program operations.

4. The Program Activity Statement, to be submitted annually, solicits a summary of program activity for the State agency's operations during the preceding fiscal year.

3. In § 272.4, paragraph (d)(2) is revised in its entirety to read as follows:

§ 272.4 Program administration and personnel requirements.

(d) Training. ** **

(2) FNS Review. FNS will review the effectiveness of State agency training based on information obtained from the performance reporting system and other sources.

§ 272.5 Amended

4. In § 272.5, paragraph (b)(3) is amended by changing the reference to "§ 272.4(b)" to "§ 272.4(a)"

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.7, introductory paragraph (g)(2) is corrected by changing the reference in the first sentence from "[(b)(1)(v) to "[(b)(1)(v)]"; paragraph (g)(3)(ii) is corrected by changing the reference in the last sentence from "273.7(b)(1)(iii)" to "273.7(b)(1)(iii)"

2. In § 273.7, paragraph (h)(2) is revised to read as follows:

3. In § 273.7, paragraph (n)(1)(v) is corrected by changing the reference in the last sentence from "[(n)(1)(iv)]" to "[(n)(1)(v)]"; paragraph (n)(2) is revised as follows:

§ 273.7 Work registration requirements.

(k) Registration of certain PA, GA, and refugee households. ** **

(2) Household members who are required to register for work under WIN or unemployment compensation and fail to comply with comparable work requirements of those programs shall be handled in accordance with the provisions in paragraph 273.7(g)(2).

(n) Voluntary Quit. ** **

(2) Exemption from voluntary quit provisions. Persons who are exempt from the work registration provisions as stated in § 273.7(b) shall be exempt from the voluntary quit provisions.

4. In § 273.12:

a. the second and third sentences of paragraph (b)(4) are removed; and

b. paragraphs (f)(4) and (f)(5) are revised.

The changes read as follows:

§ 273.12 Reporting changes.

(f) PA and GA households: (1) Except as provided in paragraph (f)(2) of this section, PA households have the same reporting requirements as any other food stamp household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food stamp purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food stamp cases are processed jointly in accordance with provisions of § 273.21(b).

(ii) State agencies may use a joint change reporting form for households to report changes for both PA and food stamp purposes. Whenever a joint change reporting form is used, the State agency shall insure that adjustments are made in a household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

(ii) State agencies may combine the use of a joint PA/food stamp change reporting form with a PA reporting system that demands the regular submission of reports, such as a monthly reporting system. The State agency shall insure that the procedures in 273.21(b) are followed.

§ 273.14 Amended

5. In § 273.14, the third and fourth sentences of paragraph (b)(3) are removed.

PART 274—ISSUANCE AND USE OF FOOD COUPONS

In § 274.3, the last sentence of paragraph (a) is revised to read as follows:

§ 274.3 Issuance of coupons through the mail.

(a) Tapes of mail issuance systems.

The State agency shall design the controls and forms to operate a regular or direct coupon mail issuance system.

PART 275—PERFORMANCE REPORTING SYSTEM

§ 275.4 Amended

1. In § 275.4, paragraph (c) is amended by replacing the phrase "Status of Sample Cases in Reporting Month and Period" with the phrase "Status of Sample Selection and Completion".

2. In § 275.5, introductory text of paragraph (a) is revised to read as follows:

§ 275.5 Scope and purpose.

(a) Objectives. Each State agency shall ensure that project areas operate the Food Stamp Program in accordance with the Act, regulations, and FNS-approved State Plan of Operation. To
ensure compliance with program requirements, ME reviews shall be conducted to measure compliance with the provisions of FNS regulations. The objectives of an ME review are to:

3. In § 275.8:
   a. the second sentence of paragraph (a) is revised; and
   b. paragraph (b)(1)(i) is revised.
   The changes read as follows:

§ 275.8 Review coverage.
(a) Program Requirements.

State agencies shall be responsible for reviewing each program requirement based upon the provisions specified in Parts 271, 272, 273 and 274 of this Chapter and the FNS-approved Plan of Operation.* *

(b) Certification Requirements.

(i) The project area maintains records as necessary to ascertain whether the program is being conducted properly.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

In § 276.3, paragraph (b)(1) is revised to read as follows:

§ 276.3 Negligence or fraud.

(b) Negligence provisions. (1) FNS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, the regulations issued pursuant to the Act, the FNS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from food stamp requirements contained in the Food Stamp Act, the food stamp regulations, the FNS-approved State Plan of Operation without first obtaining FNS approval, and the implementation of the procedures results in a loss of Federal funds.

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

§ 278.7 [Corrected]

1. At 49 FR 32538 (column 2), published August 15, 1984, amendatory instruction number 4 if corrected to read "In § 278.7, paragraphs (a) and (f) are revised to read as follows:"

2. At 49 FR 32538 (column 3), the regulatory text appearing under § 278.7 as paragraph "(e)" is corrected by replacing the reference to "(e)" with a reference to "(f)"

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

§ 279.2(o)(3) [Corrected]

3. At 49 FR 32538 (column 3), in § 279.3, paragraph (a)(3) is corrected by changing the reference to "278.7 (b), (c) or (d)" to "278.7 (c), (d), or (e)"

§ 279.11 [Corrected]

4. At 49 FR 32538 (column 1), amendatory instruction number 9 is corrected to read "A new section 279.11 is added to Part 279 to read as follows:"

5. At 49 FR 32530 (column 1), the regulatory text appearing under § 279.11 as paragraph (b) is corrected by removing the reference to "(b)" The text should have appeared as an undesignated paragraph.

Robert E. Leard,
Administrator, Food and Nutrition Service.

[FR Doc. 84-33899 Filed 12-28-84; 8:45 am]
BILLING CODE 4407-10-M

Agricultural Marketing Service

7 CFR Part 927

Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Claugneau Varieties of Pears Grown in Oregon, Washington, and California; Increase in Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule increases the assessment rate authorized under Marketing Order No. 927 for the period December 1, 1984, through June 30, 1985. The assessment rate will increase from $0.0275 to $0.22 per Western Standard pear box of pears. Authorized expenditures for the entire year will increase from $367,500 to $1,301,020. The increases are necessary to permit expenditures for market promotion and paid advertising for winter pears, the authority for which was provided by a recent amendment to the order.

DATES: The interim rule is effective for the period July 1, 1984, through June 30, 1985. Comments are due by January 30, 1985.

ADDRESS: Send four copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.


SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1912-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This interim rule is issued under the marketing agreement, as amended, and Marketing Order 927, as amended (7 CFR Part 927, 49 FR 43449, October 29, 1984), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Claugneau varieties of pears, hereafter referred to as winter pears,
The Winter Pear Control Committee, which operates under Marketing Order No. 927, at a meeting on November 29, 1984, in Portland, Oregon, unanimously recommended increasing the assessment rate and authorized expenditures for the period December 1, 1984, through June 30, 1985. They also recommended increasing the assessment rate from $0.0275 to $0.22 per Western Standard pear box of winter pears to permit expenditures for market promotion and paid advertising of winter pears. The November 28, 1984, amendment to the marketing order provides the authority to the Winter Pear Control Committee to conduct marketing promotion and paid advertising projects to promote the marketing, distribution, and consumption of winter pears. Winter pear handlers currently pay an assessment of $0.0275 per box to the committee. Up until December 1, 1984, handlers also paid $0.19 per box to the Oregon, Washington, California Pear Bureau to promote winter pears. The Winter Pear Control Committee recommended that $0.19 of the new assessment rate be allocated in its budget to paid advertising. It is estimated that 5,439,610 boxes of pears will be shipped after December 1, 1984. Therefore, a budget of $1,033,526 for paid advertising is anticipated which would bring total committee expenditures for the year to $1,301,026, up from $267,500.

The Winter Pear Control Committee also recommended that it would be in the best interests of the winter pear industry to continue the promotional projects which were implemented by the Pear Bureau at the beginning of the 1984-85 season. Such projects include point-of-sale materials, retail merchandising and magazine advertising incentives, radio commercials, a consumer advertising research and development project, and advertising in export markets in addition to supporting a field staff to carry out many of these activities.

The Secretary finds that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date of this interim rule for 30 days after publication in the Federal Register (5 U.S.C. 553) because of insufficient time between the date when information upon which this rule is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given the opportunity to submit information and views on assessments for promotion and paid advertising at a public hearing in May 1984. Subsequently, both growers and handlers approved the amendment providing authority for the Winter Pear Control Committee to collect assessments to conduct promotion and paid advertising projects. In addition, this rule was recommended by the committee without opposition at an open meeting on November 29, 1984, and handlers have approved of the provisions and effective date of this rule.

The interim rule provides a 30-day comment period. A longer comment period would be contrary to the public interest and would serve no useful purpose. Winter pear handlers have been apprised of the proposed amendment of the budget and rate of assessment. In order for the promotional authority to be of maximum benefit to winter pear handlers and growers during the current season, the amendment should be effective as specified. All comments received will be considered prior to finalization of this interim rule. It is found that this interim rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Oregon, Washington, California, pears, Beurre D'Anjou, Beurre Bosc, winter Nelis, Doyene du Comice, Beurre Easter, and Beurre Claireau.

PART 927—BEURRE D'ANJOU, BEURRE BOSCO, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIREAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

Section 927.224 (49 FR 35093) is revised to read as follows:

§ 927.224 Expenses and Rate of Assessment.

Expenses of $1,301,026 are authorized. An assessment rate of $0.0275 per Western Standard pear box of pears is established for the period July 1, 1984, through November 30, 1984, and an assessment rate of $0.22 per Western Standard pear box of pears is established for the period December 1, 1984, through June 30, 1985.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective time of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because: (1) The dates from the 1984 crop Deglet Noor are unusually small and dry, and lighter in weight than usual; (2) this has caused a substantial quantity of them to fail to meet the current size requirements and the failures are expected to continue; (3) the temporary relaxation of the size requirements hereinafter set forth will allow a larger quantity of the dates to weigh less than 6.5 grams and thus make a greater quantity of fruit available to consumers as whole dates; (4) this action relieves restrictions on handlers by permitting the shipment of a larger quantity of Deglet Noor dates for further processing; (5) no useful purpose would be served by delaying the effective date of this action; and (6) handlers are aware of this action.

This action would amend temporarily § 987.112a(c)(2) of Subpart—Administrative Rules (7 CFR 987.101-987.172) by changing the tolerance contained in the second sentence of that paragraph from 10 to 15 percent through September 30, 1985, the end of the current season. This subparagraph is issued under §§ 987.12 and 987.43, of the marketing agreement and Order No. 987 (7 CFR Part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Section 987.112a(c)(2) prescribes size requirements for whole Deglet Noor dates for further processing in terms of weight. Currently, the individual dates in the sample must weigh at least 6.5 grams, but up to 10 percent of the dates in a sample may weigh less. Dates for further processing are dates having a moisture content below 15 percent. To produce a desirable texture for eating, water must be added by hydration during processing. Dates for further processing are sold to users here and abroad desiring to use their own processing, packaging, and marketing facilities.

Deglet Noor dates in California’s 1984 date crop are unusually dry and small and lighter in weight than normal. As a result, a large quantity of the 1984 crop will exceed the current 10 percent tolerance for dates lighter than 6.5 grams. Dates failing to meet applicable size requirements must be diverted to product outlets. To allow a greater quantity of Deglet Noor dates to weigh less than 6.5 grams and thus make a larger quantity of small-sized albeit of good quality, Deglet Noor dates available for use as whole dates, a temporary increase in that tolerance to 15 percent is necessary through September 30, 1985, the end of the 1984-85 crop year.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the amendment of § 987.112a(c)(2) of Subpart—Administrative Rules (7 CFR 987.101-987.172) to temporarily relax the current size regulations for Deglet Noor dates for further processing prescribed in that subparagraph, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 987
Marketing agreements and orders; Dates; and California.

Therefore, § 987.112a(c)(2) of Subpart—Administrative Rules (7 CFR 987.101-987.172) is revised to read as follows:

§ 987.112a Grade, size, and container requirements for each outlet category.

(c) * * * * * * *

(2) FP dates of any variety shall at least meet the requirements of U.S. Grade B (dry). Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 31, 1984 and ending September 30, 1985, the 10 percent tolerance shall be increased to 15 percent. These size requirements are in addition to, and do not supersede, the requirements as to uniformity of size prescribed in the grade standards.

* * * * * *


Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-33812 Filed 12-28-84; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY
Comptroller of the Currency
12 CFR Part 8

[Docket No. 84-37]

Assessment of Fees; National Banks;
District of Columbia Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is increasing the rates in its semiannual assessment schedule for national banks, District of Columbia banks, and federally licensed branches and agencies. Unchanged for eight years, the old schedule failed to produce revenue sufficient to cover operating costs, which were boosted by inflation, an increase in responsibilities, and a modernization of bank examination techniques. The new schedule, like the old one, conforms to this Office's philosophy that the assessments paid by a bank should reflect, to the extent possible under existing statutory provisions, the costs of supervising it. On a per-dollar-of-assets basis, those costs decline as bank size increases. Therefore, in the new schedule, like the old one, the marginal assessment rate of an individual bank decreases as its asset size increases. In addition, the Office will offset declines in the overall average assessment rate due solely to inflationary growth in bank assets by indexing the schedule annually to changes in the general price level. The new schedule replaces the current assessment schedule and its temporary 12-percent surcharge for assessment fees due on January 31, 1985, and following payment dates.


SUPPLEMENTARY INFORMATION: The Office was created by Congress for the purpose of regulating the national banking system. Under the National Bank Act, 12 U.S.C. 1 et seq., the Office is responsible for ensuring that national banks comply with all applicable laws and operate in a safe and sound manner.

The Office’s responsibilities are accomplished through the examination
of supervised institutions and affiliated entities. Under 12 U.S.C. 462 and 3102, the Office is directed to recover the costs of its operations by assessing fees on national banks, District of Columbia banks, and federal branches and agencies of foreign banks. On November 14, 1984, the Office accordingly published a notice of proposed rulemaking (Docket No. 84-36) in the Federal Register, 49 FR 45102, that proposed rulemaking (Docket No. 84-36) accordingly published a notice of
and agencies of foreign banks. On Columbia banks, and federal branches on all national banks, District of costs of its operations
entities. Under 12 revisions change none of the current
proposed changes and to explain the
Bulletin, dated November 20, 1984, was
bank. The purpose of that Banking
Bulletin containing the proposal to the
proposed rulemaking in
572 current and new assessment schedules
bank's assets or resources and that the
assessments be made
inflation of the type and extent
philosophy and addresses the problems
The revision more closely implements
use of asset size to determine the
schedule's basic characteristics, i.e., the
reasons for them.
As stated in that proposal, the
revisions change none of the current
calendar's basic characteristics, i.e., the,
use of asset size to determine the
amortization and the use of
marginal assessment rates that decrease
as the asset size of a bank increases.
The revision more closely implements
the Office's relative cost coverage
philosophy and addresses the problems
caused by the combination of a
decaying marginal rate schedule and
inflation of the type and extent
increases since 1976.
Comments
Comments on the proposal were
solicited both by the Federal Register
notice of proposed rulemaking and by
the issuance of the Banking Bulletin to
each national bank. The Office
requested that comments be received no
later than December 14, 1984. In
response, 19 comments were received.
Most came from small national banks
(those under $500 million in assets)
which were opposed to the proposal as
drafted. Several specific concerns were
raised. All but three commenters
espoused the belief that the additional
costs incurred by the Office to examine
banks requiring special supervisory
attention should not be paid by clear,
well-run banks.

To better align Office supervisory
costs and assessments, a large majority of all
commenters suggested that the
assessment schedule should be based on
the direct costs attributable to
examining a particular bank, not its
asset size. This Office is aware of the
injuries identified by those
commenters. As the statute currently
reads, however, the Office is not
authorized to charge a higher
assessment to banks that are
experiencing difficulties. By revising the
assessment schedule to a direct-cost
basis would require an amendment to 12
U.S.C. 462, a change explicitly suggested
by six commenters. Although a statutory
change is not a feasible alternative to
the current revision, the Office intends to
review its long-term revenue needs
and consider requesting Congress for a
statutory change as part of that review.
Six commenters questioned Office
diligence in controlling costs. As
explained in the proposal, the Office has
sought to offset the effects of inflation and increased responsibility by
restructuring and modernizing its
operation, employing resources more
effectively and providing better service.
In fact, the Office has estimated that
without the restructuring and modernization efforts, it would have needed a much larger staff to carry out
its responsibilities.
In the same vein, three commenters
thought Office expenses should be lower
because their institutions are receiving
full-scale, comprehensive examinations
less frequently. These comments refer to
the Office's revised examination priority
schedule that calls for on-site
examinations less frequently at smaller,
well-run banks and more frequently at
large and/or special supervision banks.
In conjunction with changes in the
examination priority schedule, however,
came a commitment to move toward
more off-site monitoring of bank
performance. This required a large
initial investment in systems and
computer hardware that will produce
costs savings in the years ahead.
After consideration of the issues
raised by the commenters, it is clear that
implementation of the suggestions of
most commenters requires changes in
the law. While a change in the law along
the lines suggested by the commenters
may permit adoption of a revenue
system that is perceived to be more
equitable, a statutory change would take
considerable time and the current
financial position of the Office requires
prompt action. The Office is, therefore,
implementing the assessment schedule
as proposed in the Federal Register on
November 14, 1984 (See table 1). It will
be used in determining the assessment-fees to be paid by national banks on
Thereafter, the schedule will be revised
annually in accordance with the
indexing procedure described below.
The indexing procedure will insulate
the assessment schedule from distortions
caused by any future inflation. Such
distortions would result in deficits that
could impair the Office's ability to meet
its responsibility of maintaining the
safety and soundness of the national
banking system.

| Table 1.—Proposal for Semi-Annual Assessment Schedule for January and June 1935 |
|---|---|---|---|
| If the bank's total assets (considered domestic and foreign subsidiaries) | The semi-annual assessment fee is | Over | Not over |
| Meg | Million | Million | Million |
| 0 | 0 | 0.001000 | 0 |
| 1,000 | 17 | 15 | 21,730 |
| 15 | 0.001000 | 15 |
| 15 | 0.000500 | 15 |
| 15 | 0.000250 | 15 |
| 15 | 0.000125 | 15 |
| 15 | 0.000063 | 15 |
| 15 | 0.000045 | 15 |
| 15 | 0.000026 | 15 |
| 15 | 0.000014 | 15 |
| 15 | 0.000007 | 15 |
| 15 | 0.000003 | 15 |
| 15 | 0.000002 | 15 |
| 15 | 0.000001 | 15 |

Special Studies
Executive Order 12291

The aggregate effect of the rule on the
economy is estimated to be $15 million
in 1985. This amount represents the
difference in expected assessment

# The Office is authorized to conduct and charge
separately for each examination after the second

revenues between the current and new
schedules. The aggregate amount will be
spread among all national banks and
dederal branches and agencies, some
4,500 institutions. Institutions of similar
size will face the same impact. Thus,
The effect of the revision is unlikely to put

one conducted in a single calendar year. For those
examinations, an hourly fee is imposed.
50602
Federal Register / Vol. 49,
Federal Register I Vol. 49,
50602
competing institutions at a disadvantage
with one another or with other
competing suppliers of financial
services. Finally, the rule is not
envisioned as having significant adverse
impacts on the ability of U.S.-domiciled
national banks to compete with foreign
competitors. This is due to the fact that,
generally, only the largest institutions in
the national banking system compete
directly with foreign banks, and the
effect of the rule on their earnings is
slight.
Accordingly, tbs Office has
concluded that the rule does not meet
any of the conditions set forth in
Executive Order12291 for designation
as a major rule. Consequently, a
regulatory impact statement has not
been prepared.
RegulatoryFe.bilityAct
This Office is sensitive to the impact
of the rulq on small entities; therefore,
pursuant to the Regulatory Flexibility
Act, Pub. L No. 96-354,94 Stat. 1164, 5
U.S.C. 601--612, a preliminary regulatory
flexibility analysis was prepared. No
information received by the Office
altered the conclusions of that analysts.
Consequently, the final regulatory

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TABLE 2.-RELATIVE COST COVEAAGE
flexibility analysis is not appreciably
different from the preliminary one.
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Copies of the final analysis may be
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To summarize that analysis, this
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Office has endorsed the principle of
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million m assets are currently not
exarnation costs atbutwbo to toso banks. An Index value
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than ns Indicates that banks ae pyn fe"s thzln
assessed an amount sufficient to recover of
their proportonal shte of Office costs.
the cost of their examination, regulation,
The revised schedule is not designed to
and supervision. Assessments on banks
achieve 100 percent relative cost
with over $500 million in assets have, in
coverage because of the greater Impact
effect, been providing a cost subsidy for
that would have on banks with less than
the examination of those smallerbanks.
$100 million in assets. In addition,
In order to reduce this subsidy and to
although the impact of the revised
implement further the Office's relativeschedule on bank earnings is larger for
cost-coverage principle, the new
small banks, the reduction in earnings,
schedule moves smaller-sized banks
in absolute terms, Is minimal (see Table
toward 100 percent relative cost
3).
coverage fsee Table 2).

TABLE 3.-AssEssMFr

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Increase (percent)
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INCREASES FOR SELECTED BANK SIZES

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Anr.us-'!=zd Impact on Retun on Assets (ROA)=Chanpe In Sernl-Anrual AssesmenTotal AssGtassmsM a 50 percent tax rate.

List of Subjects in12 CFR Part 8
National Banks, Assessment of fees.

paidby each bank is computed as follows:

PART 8-[AMENDED]
For the reasons set forth above, 12
CFR Part 8 is amended as follows:
1. The authority citation for 12 CFR
Part 8 is:

Ifthe banlis totsl assets (consordated domestic

Authority: R.S. 5240, as amended, 12 U.S.C.
481,482,12 U.S.C. 3103, and in Section 3,47
Stat 1568,26 D.C. Dode 102.

2. By revising the te) t of § 8.2(a) to
read:
§ 8.2 Semiannual assessment

(a) Each national bank and each
district bank shall pay to the
Comptroller of the Currency a
semiannual assessment fee, due on
January 31 and July 31 of each year, for
the six-month period beginning thirty
days before each payment date. The
amount of the semiannual assessment

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Every national bank falls into one of the
ten asset-size brackets denoted by
columns A and B. The lower (column A)
and upper 1colunm B) endpoints of each
bracket will be indexed each year to

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reflect changes in the GNP implicit price
deflator. The percentage change in the
level of prices, as measured by the
deflator, will be calculated for each
June-to-June period and used to revise


the bracket endpoints. However, for the assessment due on January 31, 1985, the brackets will be indexed to reflect changes in the GNP implicit price deflator from 1976 through June 1984. After this adjustment has been made, the bracket endpoints will be rounded to the nearest $5 million (with the exception of the smallest asset-size bracket, which will be rounded to the nearest $1 million).

A bank's semiannual assessment is composed of two parts. The first portion is an assessment on the assets of the bank up to the lower endpoint (column A) of the bracket in which it falls; this portion of the assessment is shown in column C. The second portion is an assessment on the remaining assets of the bank, which are assessed at the rate shown in column D. This rate is applied only to the assets in excess of the lower endpoint of the bracket. The total semiannual assessment is the sum of the bracket. The total semiannual assessment is the sum of the bank's assets in excess of column E times the rate in column D, plus the amount in column C.

The specific asset-size brackets and complete assessment schedule will be published in a Banking Circular, "Notice of Comptroller of the Currency Fees" provided for at 12 CFR 8.8. Each semiannual assessment is based upon the total assets shown in the bank's most recent Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries) preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly report of condition required by the Office under 12 U.S.C. 181 is subject to the full assessment for the next six-month period without proration for any reason.

C.T. Conover, Comptroller of the Currency. December 19, 1984. [FR Doc. 84-33920 Filed 12-28-84; 8:45 am] BILLING CODE 4810-33-M

12 CFR Part 8

[Docket No. 84-38]

Assessment of Fees: National Banks, District of Columbia Banks, Federal Branches and Agencies

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is revising the fees charged by the Office for special examinations and investigations of national banking associations and District of Columbia banks, for examinations of the affiliates of such institutions, for examinations of fiduciary activities of such institutions exercising fiduciary powers, and for examinations and investigations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities. The expense of these activities is not recovered under the Office's general assessment fee. This expense is recovered under the authority of 12 U.S.C. 461 and 482 which specifically authorizes the Office to recover the costs associated with these activities from only those institutions that receive such examinations and investigations. Therefore, the Office will charge a uniform hourly fee derived from a formula based on the cost of these examinations and investigations. The hourly fee will be revised annually to reflect projected costs as reflected in the budget for the upcoming year.

In addition, the Office is instituting annual publication of a "Notice of Comptroller of the Currency Fees." This notice will include all the fees to be charged by the Office in the coming year, inclusive of this action. The notice for fees to be charged during 1985 will be published no later than January 31, 1985. Thereafter, the notice will be published no later than the first day in December for fees to be charged during each upcoming year.


SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency ("Office") is authorized by 12 U.S.C. 461 and 482 to assess a fee based on assets on all national banks, District of Columbia banks, and federal branches and agencies of foreign banks to recover the costs associated with their supervision and examination. This is the general assessment fee at 12 CFR A.2. Sections 461 and 482 also authorize the Office to recover the expenses it incurs in examining such institutions more frequently than twice in one calendar year, in examining any affiliate of a national bank, in examining the activities of institutions exercising fiduciary powers, and in conducting examinations and investigations pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities.

The Office had proposed to charge a uniform hourly fee for all examinations and investigations expenses which are not recovered through the general assessment fee. 39 FR 35784 (September 12, 1974). This proposal was based on the fact that the Office will recover only 19 percent of its costs of conducting examinations of national bank affiliates and for special examinations and investigations in 1984. Similarly, the Office will recover only 64 percent of the cost of conducting trust examinations in 1984 under the current version of 12 CFR 8.7.

The hourly rate proposed by the September 12, 1984 Notice of Proposed Rulemaking is derived from a formula which accurately reflects the salary, benefits, and travel costs of the employees performing the examinations, as well as the general, administrative, and overhead expenses (indirect costs) required to support the Office's staff.

In response to this proposal, the Office received twelve comment letters. Five of these letters reflected concerns of the commenters that this Office should develop an assessment of fees schedule which does not penalize well-managed banks for the amount of time and effort which must be spent on troubled national banks. The current proposal addressed their concern by providing for an hourly fee for the covered examinations. Only those institutions undergoing the covered examinations will incur this fee. As an hourly fee, those institutions requiring more time will pay a higher total fee.

One of these commenters also expressed the belief that "hourly wage employees complete (a) job less quickly than those paid by the job." This may well be the case. However, employees of this Office are not paid on an hourly basis; they are paid an annual salary. It is a paramount concern of the Office to minimize its costs and maximize its employee resources by encouraging its employees to complete all examinations and investigations in a timely and efficient manner.

Two commenters submitted their beliefs that, for example, costs of examining a bank in Ohio would be lower than those of examining a bank in New York because hotel and other costs in Ohio are lower and that the latter institution was therefore being penalized by the uniform rate. While this also may be true, 12 U.S.C. 482 requires that all banks pay the same rate of assessment. Therefore, it is not
possible to base assessments on the bank's locale.

One commenter was concerned that banks undergoing trust examinations would be subsidizing those institutions undergoing other types of examinations under this proposal. This concern is based on the fact that 84 percent of trust examination costs are currently being recovered by the Office while only 19 percent of other examinations' costs are being recovered. This discrepancy is due to the fact that the rates charged for trust and other types of examinations are not currently the same: the current trust rate is $48.00 per hour, while the rate for special examinations and investigations is $71.50 per hour for the examiner in charge and $10.00 per hour for assisting examiners. The current proposal will eliminate this discrepancy.

One commenter requested clarification of the phrase "in the course of examinations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities" used in the Notice of Proposed Rulemaking. This phrase refers to 12 CFR 5.7, which allows the Office to conduct an investigation or examination into the facts of a corporate filing or affairs of the persons or parties making a corporate filing to the extent necessary to reach an informed decision.

Two other commenters noted that the first business day in December would be too late a date for banks to be apprised of the fees to be charged them by this Office during the following year. Most institutions prepare their budgets in the early fall for the next year. Unfortunately, this Office does not have all the information required to formulate its own budget at that point in time. The Office's budget is not usually finalized until later in the fall. In recognition of the fact that banks do prepare their budgets earlier, however, the wording of 12 CFR 6.8 has been changed from the proposed wording. Instead of requiring publication of the Notice of the Comptroller of the Currency Fees "on the first business day of December of each year," the final regulation requires publication "no later than" that date for fees to be charged during 1985 and later years. Fees to be charged during 1985 will be published in a Notice no later than January 31, 1985, and will generally be effective after affected parties have had at least thirty days to anticipate any changes. Diligent effort will be made by this Office to publish the Notice as early as possible.

The twelfth and final comment letter praised this Office for its "eminently reasonable" proposal to standardize its costs and their recovery method.

In light of these comments, the Office is adopting its September 12, 1984 proposal to charge uniform fees for trust examinations and investigations. In 1985 and beyond, the rate will be revised annually based upon projected costs for the coming year and be calculated pursuant to the formula. The Office will provide a copy of the analysis determining the fee for a given year to any interested party upon request.

To ensure that all national banks and other interested parties are notified of the revised fee and the other fees of this Office, the Office will publish a "Notice of Comptroller of the Currency Fees" on an annual basis. The Notice for fees to be charged during 1985 will be published no later than January 31, 1985. Any revision to the fee to be charged for trust and special examinations will take effect no earlier than thirty days after publication of that Notice to allow all affected parties a reasonable period in which to anticipate the change. Thereafter, the Notice will be published no later than the first business day in December each year and will be effective at the beginning of the following year, providing a thirty-day period in which any changes may be anticipated.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 95-384, 5 U.S.C. 601 et seq.), the Comptroller of the Currency certifies that this fee revision will not have a significant impact on a substantial number of small entities. The regulation will not impose additional reporting or recordkeeping requirements on any banks subject to the jurisdiction of this Office, nor will the regulation have any other significant impact on these banks. This Office anticipates that the necessary increase in fees payable by any individual bank pursuant to this regulation will be sufficiently small as to have no appreciable effect on the individual bank's financial stability.

Regulatory Impact Analysis

Pursuant to section 8(g)(1) of Executive Order 12291 of February 17, 1981, the fee revision does not constitute a major rule within the meaning of section 3(b) of the Executive Order. The regulation (1) will not have an annual effect on the economy in excess of $100 million; (2) will not impose major cost or price increases on consumers, individual industries, federal, state or local government agencies, or geographic regions; and (3) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Therefore, no regulatory impact analysis need be prepared.

List of Subjects in 12 CFR Part 8

National banks, Assessment of fees.

PART 8—[AMENDED]

For the reasons set forth above, 12 CFR Part 8 is amended as follows:

1. The authority citation for 12 CFR Part 8 is revised to read:


2. By revising the text of § 8.6 to read:

§ 8.6 Hourly rate for examinations and investigations.

(a) Pursuant to the authority contained in 12 U.S.C. 481 and 12 U.S.C. 482, the Office of the Comptroller of the Currency assesses a fee on an hourly basis to recover the total costs of examining fiduciary activities of national and District of Columbia banks and related entities, of conducting special examinations and investigations of national and District of Columbia banks, and of conducting investigations and examinations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities.

(b) The fee assessed by subsection (a) of this section will be determined by multiplying the number of hours employees of the Office of the Comptroller of the Currency spend on examinations and investigations by the hourly rate as determined in paragraph (c) of this section.

(c) The hourly rate assessed by paragraph (a) of this section will be calculated as follows:

\[ \text{HR} = \text{DC} + \text{DC(ICR)} \times \text{HR} \]

where:

DC: Direct costs
BH: Billable hours
ICR: Indirect cost rate
HR: Hourly rate

The component parts of the formula are defined as follows:

- Direct Costs: Projected salary, benefit, and travel expenses to be incurred by the Office for employees performing examinations or investigations for the coming year.
- Billable Hours: Projected employee hours devoted to examinations and investigations for the coming year.
Indirect Cost Rate: The indirect cost rate is a ratio of total indirect costs to total direct costs for the entire Office for the coming year. Indirect costs include those costs incurred for Office support activities (legal and regulatory, administrative, training, and external relations) and support costs (supplies, office rent, equipment, etc.) that cannot be clearly identified as a consequence of the performance of a single, specific function. The indirect cost rate represents the average addition to direct costs required for the Office to recover its total costs of performing an activity.

(d) The hourly fee of subsection (c) of this section will be revised annually in the “Notice of Comptroller of the Currency Fees.”

3. Section 6.7 is removed and § 8.8 is redesignated as § 8.7 and paragraph (a) of newly designated § 8.7 is revised to read as follows:

§ 8.7 Payment of interest on delinquent assessments and examination and investigation fees.

(a) Each national bank, each district bank, each Federal branch, and each Federal agency shall pay to the Comptroller of the currency interest on its delinquent payments of semannual assessments. In addition, each national bank and each entity with a trust department examined by the Comptroller of the Currency and each institution that is the subject of a special examination or investigation conducted by the Comptroller of the Currency shall pay to the Comptroller of the Currency interest on its delinquent payments of examination and investigation fees. Semannual assessment payments will be considered delinquent payments of examination and investigation fees. Semannual assessment payments will be considered delinquent if they are received after the time for payment specified in § 8.2. Examination and investigation fees will be considered delinquent if not received by the Comptroller of the Currency within 30 calendar days of the invoice date.

4. A new § 8.8 is added to read as follows:

§ 8.8 Notice of Comptroller of the Currency Fees.

A “Notice of the Comptroller of the Currency Fees” shall be published no later than the first business day in December of each year for all fees that will be charged by the Office during the upcoming year. These fees will be effective January 1 of that upcoming year. However, fees to be charged during 1983 will be published in a Notice no later than January 31, 1983. Any fee revision (other than a revision of the semannual assessment fee at 12 CFR 8.2) contained in the Notice of fees to be charged during 1985 shall take effect no earlier than thirty days after publication of that notice.


David L. Chew, Acting Comptroller of the Currency.

[FR Doc. 84-53270 Filed 12-29-84; 8:35 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122
[Rev. 3, Amdt. 21]

Preferred Lenders Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On March 1, 1983, the Small Business Administration (SBA) began a pilot Preferred Lenders Program (PLP) in three regions. Based on the experience with the pilot, SBA is implementing regulations for a national program. Preferred Lenders will be able to guarantee a qualifying small business loan without sending the application package to SBA. These lenders will be required to perform almost all servicing and liquidation actions on a unilateral basis for all loans approved using PLP procedures. The reason for this action and the objective of this program are to permit small business to benefit from government assistance with a minimum of government involvement.

EFFECTIVE DATE: December 31, 1984.


SUPPLEMENTARY INFORMATION: On October 28, 1984, SBA published proposed regulations for the Preferred Lenders Program for a 30 day public comment period in the Federal Register. Fewer than 10 comment letters were received, all supporting the program. Three respondents suggested using a guaranty percentage greater than 75%. Based on the discussion below, SBA remains convinced that 75% is an appropriate guaranty percentage for PLP. Two respondents suggested permitting loans of $100,000 or less in the program. Since these loans are statistically required to receive a 90% guaranty (15 U.S.C. 635[a][2]), SBA has decided to exclude them from PLP in accordance with the establishment by SBA of 75% as the maximum allowable guaranty for this program. One writer suggested a reduced guaranty fee due to the increased risk for the lender. This idea was rejected because this fee is a user fee to cover SBA administrative expense. One writer suggested that the liquidation regulations were ambiguous. The liquidation procedures are fully explained in the standard operating procedure for the program. One writer suggested that repurchase procedures for secondary market purchasers be inserted in these regulations. Such procedures are not appropriate in this section and are fully detailed in other documents.

Section 114 of Pub. L. 92-352 (94 Stat 833) amended Section 5(b)(7) of the Small Business Act to allow the Administrator to permit certain lenders to act on his behalf in the processing, servicing and liquidating of SBA guaranteed loans. The purpose of the program is to fully utilize the expertise of a selected group of participating lenders. By relying on the expertise of the private sector lending partners, SBA can improve its service to the small business community without increasing its staff.

Current operating procedures require lenders to submit all applications for guaranteed loans to the local District Office. The District Office reviews the credit analysis of the lender and either approves or declines the application. In 1979, SBA began the Certified Lenders Program (CLP). In the orientation for CLP, lenders review the proper completion of the SBA loan package. SBA agrees that, if the application package is complete, the Agency will provide the CLP lender with a decision within three business days, with the loan document package to follow shortly. SBA reviews the loan application, rather than thoroughly re-analyzing it. Under CLP, certified lenders are urged to fully utilize the unilateral authorities granted to lenders by the Guarantee Agreements (SBA Forms 759 and 1125).

Preferred Lenders will be expected to perform almost all servicing actions without receiving prior permission from SBA.

This includes the release and substitution of collateral, release of guarantors, deferments, etc. The only servicing actions that a Preferred Lender may not perform unilaterally are the compromise of a debt for less than the balance outstanding, or any action that confers a preference on the financial institution.

Preferred Lenders will be required to liquidate all loans approved under PLP procedures unless SBA decides otherwise on a case-by-case basis. PLP...
Lenders must develop a plan of liquidation and submit it to SBA; however, prior SBA approval of the plan is not necessary to commence liquidation.

In return for the added responsibility and authority, Preferred Lenders will be permitted to use their own prime rate (banks only) as a base rate for variable rate loans and to permit variable rate loans to fluctuate on a daily basis. The maximum interest rate that may be charged on loans approved using PLP procedures will be governed by the state law applicable to a particular loan. The maximum guaranty percentage for a PLP loan will be 75%. This maximum, which compares with a 90% guarantee in other guaranteed loan programs, was selected as the most equitable mode to compensate SBA for the greater authority granted to Preferred Lenders. 

In the absence of statutory authority for SBA to guaranty a loan of $100,000 or less at less than 90%, PLP loans will be restricted to loans of more than $100,000. Lenders will not be permitted to reduce their exposure for any borrower.

A detailed, periodic lender evaluation will be part of the PLP.

Case files will be reviewed, and the lender’s activity will be rated by a team of local SBA employees. Deficiencies will be noted and recorded for review during subsequent evaluations.

The process for a lender to receive a Preferred designation will commence with a nomination by the local SBA district or branch office. The regional office will forward the nominations to the Headquarters Office in Washington, DC, where the Associate Administrator for Finance and Investment, or his or her designee, will make the final decision.

For the purposes of E.O. 12291 and the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the following statements are made:

This regulation constitutes a major rule within the meaning of the Executive Order. In this regard, more than $100,000,000 in PLP loans will be made annually. However, SBA certifies that this rule will not have a significant economic impact on a substantial number of small businesses for purposes of the Regulatory Flexibility Act.

SBA has determined that the use by Preferred Lenders of their own prime rate, as distinguished from a more general rate gathered from financial publications, would act as a substantial inducement to financial institutions to enter this program of increased responsibility and risk, with the concomitant benefits to small business loan applicants of increased responsiveness on the part of these lenders. The inducement is not expected to be the ability to charge a higher interest rate, but rather lower costs in loan servicing. The lower costs will result from the bank’s ability to use its existing computer software to handle interest rate fluctuations.

Many lenders use hand posting of interest rate changes because the SBA policy differs from bank policy. Use of the computer will eliminate the need for hand posting thereby decreasing the bank’s costs associated with SBA guaranteed loans. In the opinion of SBA, this new policy will have no economic impact on small business loan applicants. Most loan applicants will be eligible for consideration under this program; only in borderline cases concerning eligibility will such applicants be denied access to PLP procedures, although not to other forms of SBA guaranty assistance. In all other regards, the PLP Program retains the regulatory features of SBA’s guaranteed loan program.

Reason for Action

SBA is implementing the Preferred Lenders Program (PLP) in order to improve the delivery of financial assistance to the small business community. Certain lenders have sufficient expertise and experience with SBA loans to permit SBA to substantially decrease direct SBA involvement in processing, servicing and liquidation.

Objectives

SBA’s objective is to decrease its direct involvement in areas where private sector expertise is sufficient to provide service to the small business community so SBA can concentrate its limited resources on those areas requiring SBA attention. The legal basis for PLP is subsections 5(b)(6) and 7 of the Small Business Act, 15 U.S.C. 634(b)(6) & (7).

Number of Affected Small Businesses

The number of businesses affected by this regulation cannot be precisely determined, but it is estimated that approximately 200 lenders will enter the program. The loan volume from these lenders is expected to be approximately $280,000,000 per year going to approximately 1,000 small businesses.

Reporting and Recordkeeping

Sections 122.103(d) and 122.107 of these regulations contain reporting requirements which have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act, 44 U.S.C. Chpt. 35. Such requirements are identified in the text of the regulation by OMB approval number.

Duplicative Federal Rules

There are no duplicative Federal Rules.

Alternatives

Absent changes in SBA’s statutory guaranty authority, there are no significant alternatives available to SBA that would accomplish the same objective as that presented by this proposal in a more economical manner.

List of Subjects

13 CFR Part 122

Loan programs—business, Small Businesses.

PART 122—BUSINESS LOANS

Subpart B—Preferred Lenders Program

Sec. 122.100 Objectives of Preferred Lenders Program

122.101 Definitions as used in this subpart

122.102 Procedure for determining eligibility of preferred lender

122.103 Factors which SBA shall consider in determining eligibility

122.104 Amount of PLP loan and of maximum guaranteed portion

122.105 Maximum percentage of PLP loan to be guaranteed

122.106 Credit allocation

122.107 Processing

122.108 Interest rates

122.109 Fees

122.110 Limitations on Preferred Lender’s authority; prohibition on reducing lender’s exposure; SBA access

122.111 Loan servicing

122.112 Loan liquidation

122.113 Suspension or revocation of preferred lender status.

Authority—Secs. 5(b)(6) and (7), Small Business Act, 15 U.S.C. 634(b)(6) and (7), the latter as enacted by sec. 114 of Pub. L. 96–302 (94 Stat. 833).

§ 122.100 Objectives of Preferred Lenders Program.

The intent of Congress as expressed in 15 U.S.C. 634(b)(9) and in the regulations in this subpart is to authorize designated lending institutions, hereinafter called Preferred Lenders, to undertake loan processing, servicing, collection and liquidation functions and responsibilities with respect to SBA guaranteed loans without obtaining prior SBA approval ("the Program"). Each Preferred Lender has the right to consult with and obtain guidance at any time from SBA with...
respect to any aspect of any loan in the Program.

§ 122.101 Definitions as used in this subpart.

(a) "Act" means the Small Business Act, 15 U.S.C. 631 et seq.
(b) "Administrator" means the Administrator of SBA.
(c) "Preferred Lender" means a small business lending company as defined in § 120.4(b) of this chapter or a lending institution which is subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority satisfactory to SBA, which has met the eligibility requirements prescribed in this subpart, and which has executed with SBA the Program participation agreement.
(d) "Program" or "PLP" means the Preferred Lenders Program.
(e) "SBA" means the Small Business Administration.
(f) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States.

§ 122.102 Procedure for determining eligibility of preferred lender.

An SBA branch or district office serving the area where the principal office of the lending institution is located shall initiate the process designating a lender as a Preferred Lender. It shall make any such recommended designation to its supervisory SBA Regional Office which, together with its recommendation, shall submit the documentation to the Associate Administrator for Finance and Investment (or designee) for decision. The determination of such Associate Administrator shall be final on whether a lending institution shall be a Preferred Lender.

§ 122.103 Factors which SBA shall consider in determining eligibility.

In making the determination of whether a lending institution shall be a Preferred Lender, SBA shall consider, but is not limited to, the following factors:

(a) The lending institution must have been an active participant in the SBA Certified Lenders Program for at least the twelve consecutive months immediately prior to the SBA field office's initial recommendation.
(b) The lending institution must have demonstrated that it has the consistent ability to develop complete and well analyzed loan packages. This factor can be demonstrated by the lack of any negative comments in the file by SBA loan officers familiar with lender, the inclusion of only a minimal amount of adverse loan officer comment in relation to the volume of loans processed by this lender, or the inclusion of favorable comments by SBA loan officers. If the lender is a small business lending company subject to supervision and examination by SBA, this factor may be met by minimal adverse comments by SBA auditors in their reports.
(c) The lending institution must have demonstrated a satisfactory history of participation with SBA, which can be shown by, among other ways, a repurchase rate acceptable to SBA.
(d) The lending institution, before it can operate as a Preferred Lender, must execute SBA Form 1347, "Supplemental Loan Guaranty Agreement." (Approved by the Office of Management and Budget under control number 3245-0193)

§ 122.104 Amount of PLP loan and of maximum guaranteed portion.

The amount of a loan under this Program must exceed $100,000 and the amount of the guaranteed portion shall not exceed the statutory ceiling of $500,000.

§ 122.105 Maximum percentage of PLP loan to be guaranteed.

SBA shall not guarantee more than 75% of any loan approved under this Program.

§ 122.106 Credit allocation.

SBA shall provide each Preferred Lender with a periodic allocation of credit which shall be its maximum authority to make Program loans for the period designated in such allocation. The Preferred Lender's allocation of credit authority shall be increased only by written permission of SBA and shall not be restored automatically by payments received on SBA loans. Loans made in excess of the allocation do not qualify under this Program but may be submitted for guaranty to SBA using regular (non-PLP) procedures.

§ 122.107 Processing.

Each Preferred Lender shall be responsible for all decisions relating to eligibility (including but not limited to size, creditworthiness, loan closing and compliance with all legal requirements and SBA regulations as they apply to non-PLP loans. Evidence of a PLP loan shall be on SBA Form 4-1 (Lender's Application for Guaranty or Participation OMB Approval No. 3245-0010) stating the guaranteed percentage and signed by two authorized representatives of the Preferred Lender and submitted to SBA immediately after approval.

§ 122.108 Interest rates.

A Preferred Lender has the option of applying, on a loan to loan basis, a fixed or variable rate of interest.

(a) Fixed interest rate. If the Preferred Lender uses a fixed rate of interest in this Program, such rate shall not exceed the maximum rate authorized by the State laws applicable to the particular loan.
(b) Variable interest rate. If the Preferred Lender uses a variable interest rate, the base rate shall be either of the rates defined in § 120.5(a)(3) with six months following full disbursement, such transfer shall be at a price which will not result in a differential greater than three percentage points (three hundred basis points) from the interest rate paid by the borrower and the interest rate received by the purchaser-investor.

§ 122.109 Fees.

(a) Servicing fee on loans sold in secondary market. If a Preferred Lender sells the guaranteed portion of a loan made under this Program as provided in § 120.5(a)(3) within six months following full disbursement, such transfer shall be at a price which will not result in a differential greater than three percentage points (three hundred basis points) from the interest rate paid by the borrower and the interest rate received by the purchaser-investor.
(b) Fees in general. SBA regulations in this part and in Part 120 relating to any fees which may be charged to a borrower shall apply to any loan made under this Program. This includes, by way of example and without limitation, the rules relating to borrower's fees for services including the payment of legal, brokerage or bonus fees.

§ 122.110 Limitations on preferred lender's authority; prohibition on reducing lender's exposure; SBA access.

(a) Every Preferred Lender, in making loans under this Program, shall be bound by the basic principles governing the granting and denial of applications for financial assistance as contained in § 120.2 of this part, which may be changed from time to time. This includes the description contained therein of business concerns which are not eligible for SBA financial assistance.
(b) A Preferred Lender shall not use the PLP procedures to reduce its existing credit exposure for any borrower.
§ 122.111 Loan servicing.

(a) Standard. Each Preferred Lender shall service its SBA-guaranteed portfolio. It shall conduct its servicing in a manner that will liquidate such loan. The Preferred Lender has the authority to make the decisions required by § 122.23(b), and shall not use lower standards for such loans compared to others, if any.

(b) Servicing actions. Notwithstanding § 122.20, a Preferred Lender may take any servicing action it deems necessary for any loan approved under the Preferred Lender Program, provided, that the action does not confer a preference on the lender.

(c) Limitation. A PLP Lender shall not accept a compromise settlement.

§ 122.112 Loan liquidation.

(a) Scope. Each Preferred Lender shall liquidate any loan which it has made under PLP procedures unless SBA advises the Lender in writing that SBA will liquidate such loan. The Preferred Lender has the authority to make the decisions required by § 122.23(b) with respect to any loan made under this Program.

(b) Standard and requirements. A Preferred Lender shall submit a liquidation plan to SBA. Such plan should generally describe the course of action and provide cost estimates. SBA may require the lender to make such changes to the liquidation plan as SBA determines are necessary. Any liquidation by a Preferred Lender must be executed and completed in a commercially reasonable manner.

(c) Final accounting report. Upon completion of a liquidation under this Program, the Preferred Lender shall transmit to SBA a certified accounting of receipts and disbursements.

(d) Post audit. SBA reserves the right to conduct a post liquidation audit of any liquidation of a PLP loan by a Preferred Lender.

§ 122.113 Suspension or revocation of Preferred Lender status.

SBA reserves the right to suspend or revoke the eligibility of a Preferred Lender by providing written notice at least 10 business days prior to the effective date of the suspension or revocation. Reasons for such revocation or suspension include a repurchase rate unacceptable to SBA, violations of applicable statutes, regulations or SBA policy and procedures as published from time to time, and contained in SBA Form 1347, (OMB Approval No. 3245–0190) sec § 122.103(d) above. Procedures for appealing these decisions are found in Part 134 of this title.

(Catalog of Federal Domestic Assistance Program No. 59.012 Small Business Loans)


James C. Sanders,
Administrator.

[FR Doc. 94–33807 Filed 12–28–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 41159–4159]

15 CFR Parts 379, 386 and 399

COCOM Review of the Commodity Control List; Electronics and Precision Instruments

AGENCY: Office of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises the List entry for electronic computers and related equipment, and adds two new entries—1566, which controls software for computers and equipment described in Entry 1565, and 1567, which controls certain stored program controlled communication switching equipment.

These revisions result from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability from abroad of strategic items to potential adversaries. In consultation with the Departments of Defense and State, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. national security interests.

In addition, an exception is added to a regulatory section on Shipper's Export Declarations (SEDs) allowing use of the same SED for shipment of software and shipment of the media on which the software is contained. Otherwise, exporters would be required to submit one SED for the software and another SED for the media.

Also, ECCN 4529B is dropped from the Commodity Control List because the commodities under that entry are now controlled by 1565A.

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Also, ECCN 4529B is dropped from the Commodity Control List because the commodities under that entry are now controlled by 1565A.

The changes in export policy and procedure embodied in this rule require conforming changes in other sections of the Export Administration Regulations. However, in order to present the revised Commodity Control List entries 1565, 1566 and 1567 as quickly as possible, those conforming changes will be made at a later date. In particular, exporters should note that the documentation requirements of sections 379.10 of the Export Administration Regulations will be revised to conform to the requirements of ECCNs 1565A, 1566A and 1567A.

EFFECTIVE DATE: This rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Export Assistance Division, Office of Export Administration, Telephone (202) 377–3895.

SUPPLEMENTARY INFORMATION: The new COCOM agreement provides for the following changes to Department of Commerce export controls:

1. Releases from control low-level 8-bit digital computer systems with processing data rate does not exceed 2 Mega bit/sec.

2. Releases from control digital computers "embedded" in otherwise uncontrolled equipment when the processing data rate does not exceed 2 Mega bit/sec.

3. Releases from control digital computers "incorporated" in otherwise uncontrolled equipment when the processing data rate does not exceed 5 Mega bit/sec.

4. Releases from control certain identified low-level computer peripheral such as impact printers, floppy discs and CRT displays.

5. Substantially raises the levels of general purpose commercial computers that will likely be approved for export to the Soviet Bloc.

6. Strengthens licensing criteria for compact, lightweight ruggedized computers that could readily be integrated in tactical military systems.

7. Extends under multilateral control certain equipment containing digital computers that had been under unilateral U.S. control.

8. Imposes stricter licensing criteria for "super mini" computers with a virtual memory in excess of ½ gigabyte.

9. Establishes multilateral controls on strategically sensitive software as a separate entry on the Commodity Control List.

10. Moves telecommunication switches and associated technology and software to a separate entry on the Commodity Control List.
Savings Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before January 15, 1985, may be exported under the previous general license provisions up to and including January 29, 1985. Any such items not actually exported before midnight January 29, 1985 require a validated export license.

Rulemaking Requirements

1. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The collection of this information has been approved by the Office of Management and Budget under control number 0585-0098. The reporting requirements contained in this rule do not increase the regulatory burden on exporters.

3. Because a notice of proposed rulemaking is not being published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 379, 386 and 399

Exports, science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 379—[AMENDED]

1. Section 379.3 is amended by revising paragraph (g) to read as follows:

§ 379.4 General License GTDR: Technical Data Under Restriction.

(g) Restrictions applicable to software. (1) All software not expressly subject to the licensing requirements imposed under the Commodity Control List (CCL) is subject to the provisions of Part 379. However, the definitions contained in § 379.1 (b) and (c) apply to all software.

(2) All software exported under this General License GTDR requires a letter of assurance. However, no software or technical data may be exported or reexported under General License GTDR when such software or technical data are listed on the Commodity Control List (Supplement No. 1 to § 379.1). See ECCNs 3011A, 3351A, 379A, 1527A, 1532A, 1596A and 1567A.

In addition, exports of application software included in § 379.4 and (c) and (d) require a validated license.

PART 386—[AMENDED]

2. Section 386.3(h)(2) is revised to read as follows:

§ 386.3 Shipper's Export Declaration.

(h) * * * * *

(2) Exceptions. (i) For a shipment consisting of commodities and the containers therefor, where either the commodities only or the containers only require a validated license, both the commodities and the containers shall be entered on the same Declaration.

(ii) For shipments consisting of computer software and the media on which the software is contained, where either the software only or the media only require a validated license, both the software and the media shall be entered on the same Declaration.

PART 359—[AMENDED]

3. Section 399.1 is amended by adding a paragraph (n) reading as follows:

§ 399.1 The Commodity Control List And How To Use It.

(n) All software not expressly subject to the licensing requirements imposed under the Commodity Control List is subject to the provisions of Part 379, "Technical Data." However, the definitions contained in § 379.1(b) and (c) apply to all software. (See § 379.4(g).)

Note * * * *

4. Supplement No. 1 to § 393.1 (the Commodity Control List) is amended by revising in Commodity Group 5, Electronics and Precision Instruments, entry 1565A to read as follows:

1565A Electronic computers, "related equipment", equipment or systems containing electronic computers; and specially designed components and accessories for these electronic computers and "related equipment".

(For the export control status of "software," see ECCN 1565A.)

Controls for ECCN 1565A

Unit: Report computers and peripherals in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QT, WT, WV.

CLV $ Value Limit: $1,000 for Country Groups T & V, except for the People's Republic of China: $50 for all other destinations.

Processing Code: CS; MT for microprocessor-based systems.

Reason for Control: National security; foreign policy; nuclear non-proliferation.

Special Licenses Available: None available for electronic computers exceeding a processing data rate of 20 million bits per second, except as noted below. Electronic computers, analog or digital (including digital differential analyzers, are excluded from the Project License procedure.

Note—Under the Distribution License procedure, electronic computers that do not exceed a processing data rate of 225 million bits per second may be exported to approved consignees in destinations listed in Supp. No. 2 to Part 373. Electronic computers that do not exceed a processing data rate of 60 million bits per second may be exported under the Distribution License procedure to approved consignees in destinations listed in Supp. No. 3 to Part 373. Any device, apparatus or accessory that upgrades a computer within these limits may be exported under the Distribution Licence procedure.

Note—Distribution Licenses are not valid for the export of any computers to ultimate consignees engaged directly or indirectly in any of the following activities—

(a) Deassembling, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;
(b) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of irradiated special nuclear material, for the production of heavy water, for the separation of isotopes of any source or special nuclear material, or specially designed for the fabrication of nuclear reactor fuel containing plutonium;

c (Designing, assisting in the design of, constructing, fabricating or furnishing equipment or components specially designed, modified or adapted for use in such facilities; or
(d) Training personnel in any of the above activities.

Special South Africa and Namibia Controls: Foreign policy export controls for ECCN 1565A apply only to computer equipment destined for the Department of Cooperation and Development, the Department of Internal Affairs, the Department of Community Development, the Department of Justice, the Department of Manpower Development, the Department of Community Development, the Department of Justice, and the Department of Internal Affairs, the Department of Community Development, the Department of Justice, and the Department of Manpower Development.

Nuclear Non-Proliferation Controls: The following equipment is subject to nuclear non-proliferation controls and requires a validated license for Country Groups QSTVWYZ and, in the case of (a)(1) through (4) below, to Canada:

(a) Electronic computers intended for ultimate consignees engaged directly or indirectly in any of the following activities:

(1) Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;

(2) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of irradiated special nuclear material, for the production of heavy water, for the separation of isotopes of any source or special nuclear material, or specially designed for the fabrication of nuclear reactor fuel containing plutonium;

(3) Designing, assisting in the design of, constructing, fabricating or furnishing equipment or components specially designed, modified or adapted for use in such facilities; or

(d) Training personnel in any of the above activities; and

(b) Advanced electronic digital computers with a processing data rate of 20 million bits per second or more (including digital differential analyzers) except:

(1) Electronic computers that do not exceed a processing data rate of 225 million bits per second are not subject to nuclear non-proliferation controls for destinations listed in Supp. No. 2 to Part 373 of the Export Administration Regulations unless the activities cited in (a) above are involved; or

(2) Electronic computers that do not exceed a processing data rate of 60 million bits per second are not subject to nuclear non-proliferation controls for destinations listed in Supp. Nos. 2 and 3 to Part 373 of the Export Administration Regulations unless the activities cited in (a) above are involved.

Note—Refer to § 376.10 of the Regulations for specific information required to be filed with applications for QWY destinations and the People's Republic of China (PRC). For all destinations other than QWY countries or PRC, follow general application instructions and, in addition, indicate in the commodity description column on Forms ITA-622P and ITA-689P the “processing data rate.” Section 376.10 of the Regulations provides the formula for calculating that rate.

Note—Certain digital computers and/or devices and related peripherals may be exported or reexported under General License G-DEST to all destinations except those in Country Groups S & Z, subject to the provisions of § 376.10(a)(5) of the Regulations.

Technical Notes:

1. Electronic computers and “related equipment” are categorized as follows:

“Analog computer”—

Equipment that can, in the form of one or more continuous variables:

(a) Accept data;

(b) Process data; and

(c) Provide output of data.

“Digital computer”—

Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; and

(d) Provide output of data.

Note: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

“Hybrid computer”—

Equipment that can:

(a) Accept data;

(b) Process data, in both analog and digital representations; and

(c) Provide output of data.

“Related equipment”—

Equipment “embedded” in, “incorporated” in, or “associated” with electronic computers, as follows:

(a) Equipment for interconnecting “analog computers” with “digital computers”;

(b) Equipment for interfacing electronic computers to local area networks or to “wide area networks”;

(d) Communication control units;

(g) Displays; or

(h) Other peripheral equipment.

Note: “Related equipment” containing an “embedded” or “incorporated” electronic computer, but lacking “user-accessible programmability”, does not thereby fall within the definition of an electronic computer.

2. This ECCN 1565A includes:

(a) Assemblies, modules, or printed circuit boards with mounted components referred to ECCN 1565A by ECCN 1564A;

(b) Assemblies of materials or thin film devices or devices containing them referred to ECCN 1565A by ECCN 1568A;

(c) Processors for stored program control.

(For a complete list of definitions of terms used in this ECCN, see Advisory Note 16 below.)

List of Electronic Computers and Related Equipment Controlled by ECCN 1565A:

(a) “Analog computers” and “related equipment” therefor, designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures below 228 K (—45 °C) to above 328 K (45 °C);

(b) Equipment or systems containing “analog computers” controlled by paragraph (a);

(c) “Analog computers” and “related equipment” therefore, other than those controlled by paragraph (a), except those that neither:

(1) Are capable of containing more than 20 summers, integrators, multipliers or function generators; nor
(2) Have facilities for readily varying the interconnections of such components;

(d) "Hybrid computers" and "related equipment" therefor, with all the following characteristics:

(1) The analog section is controlled by paragraph (e);

(2) The digital section has an internal fixed or alterable storage of more than 2,048 bit; and

(3) Facilities are included for processing numerical data from the analog section in the digital section or vice versa;

(e) "Digital computers" or controlled "analog computers" containing equipment for interconnecting "analog computers" with "digital computers";

(f) "Digital computers" and "related equipment" therefor, with any of the following characteristics:

(1) Designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures from below 226 K (-55°C) to above 328 K (+55°C); and

(2) Designed or modified to limit electromagnetic radiation to levels much less than those required by government civil interference specifications;

(3) Designed as ruggedized or radiation hardened equipment and capable of meeting military specifications for ruggedized or radiation hardened equipment or

(4) Modified for military use;

(g) Equipment or systems containing "digital computers" controlled by paragraph (f);

(h) "Digital computers" and "related equipment" therefore, other than those controlled by paragraph (e) or (f), even when "embedded", "incorporated", "associated" with equipment or systems;

Note: The control status of these "digital computers" and "related equipment" therefore is governed by the appropriate ECCN, provided that

(a) They are "embedded" in other equipment or systems;

(b) They are not the "principal element" of the other equipment or systems in which they are "embedded";

(c) They are not described by other ECCNs of the Commodity Control List identified by the code letter "A", nor covered by the International Traffic in Arms Regulations, by 10 CFR 120 or by 10 CFR 610;

(2) The interconnection of two "digital computers" so that, if the active central processing unit fails, an idle but backing central processing unit can recognize the system's functioning;

(c) The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning;

(d) The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

(i) Reserved;

(ii) "User-accessible microprogrammability";

Note: For the purpose of the sub-paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "user-accessible microprogrammability" if the facility is limited to:

(a) Loading, reloading or erasing of "microprograms" provided by the supplier;

(b) Simple loading of "microprograms", which may or may not be provided by the supplier, but that are neither designed to be accessible to the user nor accompanied by training or "software" for user accessibility.

(k) "Data (message)-switching";

(l) "Stored program controlled circuit switching";

(m) "Wide area networks";

(3) Having the following characteristics:

(A) Size, weight, power consumption and reliability or other characteristics (e.g., bubble memory), that allow easy application in mobile tactical military systems and

(B) Ruggedized above the level required for a normal commercial (office) environment, but not necessarily up to levels specified in paragraph (f);

(2) Except:

(i) "Digital computers" or "related equipment" therefore, provided that

(A) They are "embedded" other equipment or systems;

(B) They are not the "principal element" of other equipment or systems in which they are "embedded";

(C) They are described by other ECCNs of the Commodity Control List identified by the code letter "A", nor covered by the International Traffic in Arms Regulations, by 10 CFR 120 or by 10 CFR 610;

(D) The "total processing data rate" of any one "embedded" "digital computer", does not exceed 25 million bit per second;

(E) The sum of the "total processing data rate" of each "embedded" "digital computer", does not exceed 50 million bit per second; and
implemented by using integral interfaces thereby do not include:

(1) Equipment or systems controlled by ECCN 1519(c) or by ECCN 1567; or
(2) Equipment described in subparagraph (h)(1)(ii) (A) to (M), other than for:

(i) "Signal processing" or "image enhancement" when lacking "user-accessible programmability" and when "embedded" in medical imaging equipment; or

(ii) "Local area networks" implemented by using integral interfaces designed to meet ANSI/IEEE Std 488-1978 or IEC Publication 625-1.

(3) "Digital computers" or "related equipment" therefor, provided that:

(A) They are "incorporated" in other equipment or systems;

(B) They are not the "principal element" of the other equipment or systems in which they are "incorporated";

(C) The other equipment or systems are not controlled by other ECCNs of the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810;

(4) The "total processing data rate" of any one "incorporated" "digital computer" does not exceed 4.9 million bit per second;

(F) The "incorporated" "digital computers" or "related equipment" thereof do not include:

(1) Controlled "related equipment";

(2) Equipment or systems controlled by ECCN 1519(c) or by ECCN 1567;

(3) Equipment described in subparagraph (h)(1)(ii) or

(4) Equipment described in subparagraph (h)(1)(i)(A) to (M), other than for:

(i) "Signal processing" or "image enhancement" when lacking "user-accessible programmability" and when "embedded" in medical imaging equipment; or

(ii) "Local area networks" implemented by using integral interfaces designed to meet ANSI/IEEE Std 488-1978 or IEC Publication 625-1;

Note: "Digital computers" or "related equipment" "incorporated" in equipment exportable under the provisions of ECCNs 1501, 1502, 1510 or 1518, that are for internal functions that incidentially might be considered to be described by subparagraph (h)(1)(i)(F) are exportable as part of that equipment. "Digital computers" or "related equipment" for the "real-time processing" of the outputs of the equipment controlled by ECCNs 1501, 1502, 1510 or 1518 and for Air Traffic Control systems are covered by this ECCN 1565.

(iii) Reserved;

(iv) "Digital computers" other than those described in subparagraph (h)(1), shipped as complete systems and having all the following characteristics:

(A) Designed and announced by the manufacturer for identifiable civil use;

(B) Not specially designed for any equipment controlled by any other ECCN of the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810;

(C) "Total processing data rate" not exceeding 2 million bit per second;

(D) "Total internal storage available to the user" not exceeding 1.1 million bit; and

(E) Not including any of the following:

(1) A central processing unit implemented with more than one microprocessor or microcomputer microcircuit;

Note: This limit does not include any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.

(2) A microprocessor microcomputer microcircuit with:

(i) A principal operand (data) word length of more than 8 bit; or

(ii) A typical "speed"-power dissipation product of less than:

(A) 2 microjoules for microprocessor microcircuits; or

(B) 1.2 microjoules for microcomputer microcircuits;

Technical Note: "Speed" is defined here as the time needed to fetch an operand C and another operand D, both from an external storage outside any work register, add these operands and put the result back in storage. (See ECCN 1564A for additional information on microprocessor microcircuits.)

(3) Analog-to-digital or digital-to-analog converter microcircuits:

(a) Exceeding the limits of ECCN 1568 (k), and

(b) Not for direct driven video monitors for normal commercial television;

(4) Controlled "related equipment";

(5) Equipment controlled by ECCN 1519(c) or by ECCN 1567;

(6) Peripheral equipment, as follows, that may contain "embedded" microprocessor microcircuits but lacks "user-accessible programmability":

(A) Card punchers and readers;

(B) Paper tape punchers and readers;

(C) Manually-operated keyboards and teletype devices;

(D) Manually-operated graphic tablets not having more than 1024 resolvable points along any axis;

(E) Impact printers;

(F) Non-impact printers, not controlled by ECCN 1572 (b) or (c), that do not exceed:

(1) 2,000 lines per minute; or

(2) 300 characters per second;

(C) Plotting equipment, not controlled by ECCN 1572 (b) or (c), producing a physical record by ink, photographic, thermal, or electrostatic techniques, that has:

(1) A linear accuracy worse than or equal to ±0.004%; and

(2) An active plotting area less than or equal to 1,700 mm (66.9 inch) by 1,300 mm (51.2 inch);

(H) Digitizing equipment, generating rectilinear coordinate data by manual or semi-automatic tracing of physical records, that has:

(1) A linear accuracy worse than or equal to ±0.004%; and

(2) An active digitizing area less than or equal to 1,700 mm (66.9 inch) by 1,300 mm (51.2 inch);

(1) Reserved;

(J) Optical mark recognition (OMR) equipment;

(K) Optical character recognition (OCR) equipment that:

(1) Does not contain "signal processing" or "image enhancement" equipment; and

(2) Is only for:

(i) Stylized OCR characters;

(ii) Other internationally standardized stylized character fonts; or

(iii) Other characters limited to non-stylized or hand printed numerics and up to 10 hand printed alphabetic or other characters;

(L) Cathode-ray tube displays for which circuitry and character-generation devices, external to the tube, limit the capabilities to:

(1) Alpha-numeric characters in fixed formats;

(2) Graphs composed only of the same basic elements as used for alphanumeric character composition; or

(3) Graphs for which the sequence of symbols and basic elements of symbols are fixed;

(M) Cathode-ray tube graphic displays, not containing cathode-ray tubes controlled by ECCN 1541, limited as follows:

(1) The "maximum bit transfer rate" from the electronic computer to the display does not exceed 5,000 bit per second;

Note: Direct driven video monitors are excluded from this limitation.
(3) Not more than 1,024 resolvable elements along any axis; and
(4) Not more than 16 shades of gray or color;
(N) Cathode-ray tube graphic displays, not containing cathode-ray tubes controlled by ECCN 1541, provided that they are:
(1) Part of industrial or medical equipment; and
(2) Not specially designed for use with electronic computers;
(0) Graphic displays specially designed for signature or security checking having an active display area not exceeding 150 sq. cm. (23.25 sq. inch);
(P) Other displays, provided that:
(1) Circuity and character-generation devices, external to the display device (e.g., panel, tube) and the construction of the display device limit the capabilities to:
(i) Alpha-numeric characters in fixed formats;
(ii) Graphs composed only of the same basic elements as used for alphanumeric character composition; or
(iii) Graphic displays for which the sequence of symbols and basic elements of symbols are fixed: and
(2) They are limited to:
(i) A capability for displaying not more than 3 levels (off, intermediate, and full on); and
(ii) A maximum character height of not less than:
(A) 5.3 mm. (0.22 inch) if the area is 1,200 sq. cm. (186 sq. inch) or less; or
(B) 20 mm. (0.79 inch) if the area is more than 1,200 sq. cm. (186 sq. inch); and
(3) They do not have as an integral part of the display device:
(i) Circuitry; or
(ii) Non-mechanical character-generation devices;
(Q) Light gun devices or other manually operated graphic input devices that are:
(1) Part of uncontrolled displays; and
(2) Limited to 1,024 resolvable elements along any axis;
(R) Disk drives for non-weak magnetic media (floppy disks) not exceeding:
(1) A "gross capacity" of 17 million bit;
(2) A "maximum bit transfer rate" of 0.52 million bit per second; or
(3) An "access rate" of 6 accesses per second;
(S) Cassette/cartridge tape drives or magnetic tape drives not exceeding:
(1) A "maximum bit packing density" of 168 bit per mm. (6,600 bit per inch) per track;
(2) A "maximum bit transfer rate" of 1.28 million bit per second; or
(3) A maximum tape read/write speed of 254 cm. (100 inch) per second; or
(T) Cassette/cartridge tape drives not exceeding:
(1) A "maximum bit packing density" of 107 bit per mm. (2,700 bit per inch) per track; or
(2) A "maximum bit transfer rate" of 0.128 million bit per second;
(3) Input/output interface or control units, as follows, that may contain "embedded" microprocessors or microcircuits but lack "user-accessible programmability":
(A) Designed for use with peripheral equipment free from control under subparagraph (h)(2)(iv) above or
(B) Designed for use with digital recording or reproducing equipment specially designed to use magnetic card, tag, label or bank check recording media, free from control according to ECCN 1572(a)(ii): (i) Reserved.
Advisory Note 2: Reserved.
Advisory Note 3: Licences are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of "analogue computers" and "related equipment" therefore controlled by paragraph (c), provided that:
(a) The equipment is primarily used in non-strategic applications;
(b) The equipment will be used primarily for the specific non-strategic application for which the export would be approved and:
(1) The number, type, and characteristics of such equipment are reasonable for this application; and
(2) The equipment will not be used for the design, development or production of equipment controlled by other ECCNs identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 130 or by 10 CFR 810, especially for microelectronics production;
(c) The "analogue computers" use neither:
(1) Optical computation devices nor
(2) Acoustic wave devices controlled by ECCN 1585, other than those exportable under the Advisory Note to ECCN 1585;
(3) The analog computers are limited as follows:
(i) The rated errors for summers, inverters and integrators are not less than:
(a) Static .0015
(b) Total at 1 kHz .025%
(ii) The rated errors for multipliers are not less than:
(a) Static .005%
(b) Total at 1 kHz .025%
(iii) The rated error for fixed function generators (log x and sincosincos) is not less than:
Static .005
(1) No more than 30 operational amplifiers; and
(5) No more than four integrator time scales switchable during one program.

Technical Notes:
(1) The percentage for Advisory Note 3(c)(i)(f)(i) and 3(c)(i)(f)(ii) are to be measured with those resistors incorporated in the inverter, summer or integrator that provide the least error.
(2) Total error measurements include all errors of the unit resulting from, for example, tolerances of resistors and capacitors, tolerances of input and output impedances of amplifiers, the effect of loading, the effects of phase shift, and the generating of functions.

Advisory Note 4: Reserved.
Advisory Note 5: Licences are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" and "related equipment" therefore controlled by paragraph (h), provided that:
(a) The "digital computers" and the "related equipment":
(1) Have been designed and announced by a manufacturer for identifiable and dedicated medical applications;
(2) Are substantially restricted to the area of medical applications by nature of design and performance;
(3) Are the equipment necessary for the medical application;
(4) Are exported as complete systems;
(5) Will be located within one "computer using facility"; and
(6) Do not include communication control units or "communication channels";
(7) Equipment for "signal processing", "image enhancement", or "multi-data-stream processing" is:
(1) "embedded";
(2) Designed specially for reconstructive tomography, and
(3) Does not have "user-accessible microprogrammability":
(c) The "total processing data rate" of any one "incorporated" "digital computer" does not exceed 15 million bit per second; and
(d) The "digital computers" or "related equipment" therefore do not include:
(1) Equipment controlled by ECCN 1519(c) or ECCN 1569; or

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(2) Equipment described in subparagraph (b)(3)(i)(C) and (h)(4)(i)(E) to (M).

Advisory Note 6: Reserved.

Advisory Note 7: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of digital computers or related equipment", provided that:

(a) The parts are:
   (1) "Related equipment" or specially designed components controlled by ECCN 1565; or
   (2) Equipment or components controlled by other ECCNs of the Commodity Control List;

(b) The parts:
   (1) Are destined for controlled equipment authorized for export under an Advisory Note, or for uncontrolled equipment;
   (2) Are shipped in the minimum quantities necessary for the types and quantities of exported equipment being serviced; and
   (3) Do not upgrade the performance of the exported equipment beyond the level:
      (i) Specified in the relevant Advisory Note; or
      (ii) Specified as uncontrolled;
   (c) If the parts are "advanced technology parts" and not eligible for export under an Advisory Note of another ECCN, the Western supplier’s service organization must:
      (1) Replace the parts on a one-for-one exchange basis;
      (2) Take measures to obtain custody of the defective parts; and
      (3) If custody is not obtained, destroy the defective parts;

Technical Note: For the purpose of this paragraph, "advanced technology parts" are either:

(a) Parts controlled by sub-paragraph (c)(3) of ECCN 1564;
(b) Microprocessor, microcomputer, memory, programmed logic array or arithmetic logic unit microcircuits controlled by paragraph (d) of ECCN 1564;
(c) Magnetic tape heads, magnetic disk heads, magnetic drum heads, or non-exchangeable magnetic disk or drum recording media controlled by ECCN 1372; or
(d) Acoustic wave devices controlled by ECCN 1586, other than those exportable under the Advisory Note to ECCN 1586.

Advisory Note 6: Reserved.

Advisory Note 7: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (b), provided that:

(a) The "digital computers" or "related equipment" therefor:
   (1) Are not described in subparagraph (b)(3)(i)(D) to (M);
   (2) Are not usable with "digital computers" produced in controlled areas;
   (3) Are not described in subparagraph (h)(3)(i)(E) to (M); and
   (4) Have not been designed for any equipment;

(i) Controlled by any other ECCN of the Commodity Control List identified by the code letter "A"; and
(ii) Controlled by any other ECCN identified by the code letter "M";

(b) Have been primarily designed and used for non-strategic applications;

(c) Do not have any of the following characteristics:

   (i) Are excluded from the scope of paragraphs (h)(1)(i) to (M);
   (ii) They fall within the scope of sub-paragraphs (h)(1)(ii)(A) and (B); or
   (iii) They fall within the scope of sub-paragraph (h)(2)(a) and (b) and are microprocessor based systems having a word length of more than 8 bit;

(d) Have not been designed for any equipment;

(i) They fall within the scope of both sub-paragraphs (h)(1)(i)(A) and (B);
(ii) They fall within the scope of sub-paragraph (h)(2)(a) and (b) and are microprocessor based systems having a word length of more than 8 bit;

(e) They are designated as uncontrolled;

(f) Are shipped in the minimum quantities necessary for the types and quantities of exported equipment being serviced.

Technical Note: Magnetic core "main storage" is not considered "non-volatile storage" for purposes of this sub-paragraph.

Note: Magnetic core "main storage" Is not considered "non-volatile storage" for purposes of this sub-paragraph.

Number of microprocessor microcircuits implementing the central processing unit—three;

Note: This limit does not include any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.

(2) Input/output control unit—drum, disk or cartridge type streamer tape drive combinations:

(i) Total processing data rate—317.5 million bit per second;
(ii) Total data access rate—195 million bit per second;
(iii) Total connected "net capacity"—5.3 million bit;
(iv) Total connected "net capacity"—2,800 million bit;
(v) Maximum bit transfer rate—10.3 million bit per second;
(vi) Number of streamer tape drives—one, having a "maximum bit transfer rate" of 5.5 million bit per second;
(vii) Number of independent drum or disk drives including the streamer tape drive—four;
(viii) Exchangeable disk packs containing magnetic heads:

(a) "Access rate of an independent seek mechanism"—20 accesses per second;
(b) "Net capacity"—240 million bit;
(c) Input/output control unit—bubble memory combinations:
   (i) For point of sale devices used by cashiers:

   Total connected "net capacity"—5.3 million bit;
   (ii) For "digital computers" and "related equipment" other than those in (i) above:

   Total connected "net capacity"—2.1 million bit;
   (iii) Maximum bit transfer rate of any magnetic tape drive—1.6 million bit per second;
   (iv) Maximum bit transfer rate of any magnetic tape drive—63 bit per mm. (160 bit per inch) per track;
   (v) Maximum tape read/write speed—5.5 cm. (2.125 inch) per second;
   (vi) Communication control unit—communication channel combinations:

   (i) "Total data signalling rate" of all communication channels terminating
remote from the “computer using facility”—9,600 bit per second;
(ii) Maximum “data signalling rate” of
any “communication channel”—4,800 bit per second;
(iii) Number of “communication channels” not dedicated full time to the
given application—two, provided that they:
(A) Have telex interfaces for services conforming to CCITT recommendations
F60 to 79;
(B) Are connected to the public switched network; and
(C) Have a “data signalling rate” not exceeding 300 bit per second at the
interface between the “digital computer” and the telex communication control
unit;
(iv) “Communication channels”
terminating within the “computer using facility” that utilize or are connected to a
common carrier communication facility or to an internal PABX other
than that identified in (iii) above—none;
(v) Input/output or communication
control unit—directly connected data
channel combinations:
(i) “Total transfer rate”—1.6 million
bit per second;
(ii) “Transfer rate of any data
d channel”—1.6 million bit per second;
(iii) Terminations of such
combinations or any extensions thereto
outside the “computer using facility”—
none;
(vi) “Signal processing” or “image
enhancement” equipment:
“Equivalent multiply rate”—100,000
operations per second;
(ii) Analog-to-digital or digital-to-
alog converter microcircuits
exceeding the limits of ECCN 1566(k)
not including those converter
microcircuits that are “embedded” in
equipment otherwise exportable, are for
the internal functions of such equipment,
and are exported as part of that
equipment)—none;
(vi) Equipment described in Advisory
Note 9(b) (1) to (5) above (including
interface equipment and terminating
modems of all “communication
channels”) located outside the
“computer operating area”—none;
(vii) “Total processing data rate”—5
million bit per second;
(ii) “Total connected capacity of
“main storage”—4.9 million bit;
(iii) “Maximum bit transfer rate” of
any drum or disk drive—5.5 million
bit per second;
Then there are no quantity limitations
on the export of equipment per
transaction:
(3) When the parameters of any
equipment involved in one transaction
exceed any limit of paragraph (c) above,
but the following parameters are not
exceeded:
(i) “Total processing data rate”—15
million bit per second;
(ii) Number of independent drum or
disk drives including the streamer tape
drive—four, of which not more than two
drum or disk drives have a “maximum
bit transfer rate” exceeding 5.5 million
bit per second;
Then the “cumulative total processing
data rate” must not exceed 169 million
bit per second;
(4) When the following parameter of
any equipment involved in one
transaction exceeds:
(i) “Total processing data rate”—15
million bit per second;
The “cumulative total processing
data rate” must not exceed 38 million
bit per second.

**Advisory Note 10: Reserved.**

**Advisory Note 11: Reserved.**

**Advisory Note 12:** Licenses will receive
favorable consideration for export to
satisfactory end-users in Country
Groups QVY of “digital computers” or
“related equipment” therefor controlled by
paragraph (h), provided that:
(a) The “digital computers” or “related
equipment” therefor:
(i) Are not described in sub-
paragraphs (b)(1)(i)(D) to (M);
(ii) Are not used with “digital
computers” produced in controlled
areas;
Note: This does not preclude the
exchange of data media.
(b) Are connected to the public
switched network; and
(c) Are not intended for
export:
(i) “Total processing data rate”—
15 million bit per second;
(ii) “Total connected capacity of
“main storage”—25.2 million bit;
(iii) “Maximum bit transfer rate”—
5.5 million bit per second;

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Note: If the “total data signalling rate”
on the common transmission medium
does not exceed 1.8 million bit per second,
this subparagraph will not apply.

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Note: 16-bit word length systems with
a 32-bit architecture are regarded as 16-
bit systems for the purpose of this sub-
paragraph.

(b) The “digital computers” and
“related equipment” therefor do not exceed
any of the following limits:
(i) Central processing unit—“main
storage” combinations:
(i) “Total processing data rate”—48
million bit per second;
(ii) “Total connected capacity of
“main storage”—25.2 million bit;

**ISO/DIS 7498, Data Processing—**
Open System Interconnection, Basic
Reference Model, February 4, 1982,
Fascicle V11.2, Vol. Plenary Assembly,
November 1982.
(iii) "Non-volatile storage" with "user accessible programmability", including bubble memory—none;

Note: Magnetic core "main storage" is not considered "non-volatile storage" for purposes of this sub-paragraph.

(iv) "Virtual storage" capability—512 M Byte;

(2) Input/output control unit—drum, disk or cartridge type streamer tape drive combinations:

(i) "Total transfer rate"—15 million bit per second;

(ii) "Total access rate"—320 access per second;

(iii) Total connected "net capacity"—7,000 million bit;

(iv) "Maximum bit transfer rate" of any drum or disk drive—10.3 million bit per second;

(v) Number of streamer tape drives—one, having a "maximum bit transfer rate" of 7.5 million bit per second;

(vi) Number of drum or disk drives exceeding a "maximum bit transfer rate" of 7.5 million bit per second—four;

(vii) Exchangeable disk-packs containing magnetic heads:

(A) "Access rate" of an independent seek mechanism—29 accesses per second;

(B) "Net capacity"—640 million bit;

(3) Input/output control unit—bubble memory combinations:

(i) For point of sale devices used by cashiers:

Total connected "net capacity"—5.3 million bit;

(ii) For "digital computers" and "related equipment" other than those in (i) above:

Total connected "net capacity"—2.1 million bit;

(4) Input/output control unit—magnetic tape drive combinations:

(i) "Total transfer rate"—5.2 million bit per second;

(ii) Number of magnetic tape drives—twelve;

(iii) "Maximum bit transfer rate" of any magnetic tape drive—2.6 million bit per second;

(iv) "Maximum bit packing density"—63 bit per mm. (1,600 bit per inch) per track;

(v) Maximum tape read/write speed—508 cm. (200 inch) per second;

(S) Communication control unit—"communication channel" combinations:

(i) "Total data signalling rate" of all "communication channels" terminating remote from the "computer using facility"—19,200 bit per second;

(ii) Maximum "data signalling rate" of any "communication channel"—9,600 bit per second;

(iii) Number of "communication channels" not dedicated full-time to the given application—four, provided that they:

(A) Have telex interfaces for services conforming to CCITT Recommendations F60 to 79;

(B) Are connected to the public switched network; and

(C) Have a "data signalling rate" not exceeding 300 bit per second at the interface between the "digital computer" and the telex communication control unit;

(iv) "Communication channels" terminating within the "computer using facility", that utilize or are connected to a common carrier communication facility or to an internal PABX other than that identified in (iii) above—none;

(6) Input/output or communication control unit—directly connected data channel combinations:

(i) "Total transfer rate"—3.8 million bit per second;

(ii) "Transfer rate of any data channel"—1.6 million bit per second;

(iii) Terminations of such combinations or of any extensions thereto outside the "computer using facility"—none;

(7) Communication control unit—"local area network" combinations:

(i) "Total data signalling rate" on the common transmission medium—10 million bit per second;

(ii) Maximum "data signalling rate" of any "communication channel"—1.6 million bit per second;

(iii) Packet switching protocol levels—those limits specified in:

(A) ISO/DIS7498, Data Processing—Open System Interconnection, Basic Reference Model, February 4, 1982, Layer 2;

(B) CCIT TX.25, Volume VIII—Fascicle VIII.2, VIIth Plenary Assembly, 10-21 November 1980, Level 2, (pages 104 to 120); or

(Draft IEEE 802.2, Logical Link Control, Draft D, November 1982;
(iv) Inter-network gateways—none;

(v) Maximum number of "data devices"—48;

(vi) Terminations of such combinations or any extensions thereto outside the "computer using facility"—none;

(vii) All "digital computers" connected to a "local area network" will be considered to be a single system sharing "main storage" (for purposes of computing the Advisory Note 12 parameters).

Note: If the "total data signalling rate" on the common transmission medium does not exceed 1.6 million bit per second, this sub-paragraph will not apply.

(B) "Other peripheral devices":

(i) Maximum bit transfer rate of any "terminal device" located remote from the "computer using facility"—9,600 bit per second;

(ii) Displays or graphic input devices:

(A) Resolvable elements along any axis—812, and shades of gray or color—256; or

(B) Resolvable elements along any axis—500, and shades of gray or color—64; or

(C) Resolvable elements along any axis—512, and shades of gray or color—256; or

(B) Resolvable elements along any axis—1,024, and shades of gray or color—32;

(9) Other limits on equipment:

(i) "Signal processing" or "image enhancement" equipment:

(A) "Equivalent multiply rate"—800,000 operations per second;

(B) Output—8 million image elements per second;

(ii) Equipment described in Advisory Note 12(b) (1) to (5) (including interface equipment and terminating modems of all "communication channels") located outside the "computer operating area"—none;

(c) Exports of "digital computers" or related equipment" hereafter covered by this Advisory Note 12 shall be subject to the following restrictions:

(1) In all cases:

(i) A responsible representative of the end-user(s) or the importing agency must submit a signed statement describing the end-use and certifying that:

(A) Reserved;

(B) Responsible Western representatives of the supplier will:

(1) Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; and

(2) Be furnished information demonstrating continued authorized application of the equipment; and

(C) These Western representatives will be notified of any significant change of application or of other facts, on which the license was based;

(ii) A full description must be provided of:

(A) The equipment; and

(B) Its intended application and work load; and

(iii) A complete identification of all end-users and their activities must be provided;

(2) There is no visitation requirement when the parameters of the equipment do not exceed:

(i) "Total processing data rate"—23 million bit per second; and
(ii) "Total connected capacity" of "main storage"—9.8 million bit;
(3) When the parameters of the equipment exceed either limit of (2) above, but the following parameters are not exceeded:
   (i) "Total processing data rate"—40 million bit per second; and
   (ii) "Total connected capacity" of "main storage"—19.6 million bit;
Then the supplier will:
(1) Have a responsible Western representative visit and inspect the "computer using facility" and all equipment, wherever located, at least quarterly for three years; and
(2) Report periodically to OEA whether the "digital computers" and related equipment therefor are still being used for the approved purposes at the authorized location;
(3) When the parameters of the equipment exceed either limit of (3) above, then the supplier will:
(1) Have a responsible Western representative visit and inspect the "computer using facility" and all equipment, wherever located, at least monthly for two years and thereafter quarterly for four years; and
(2) Report periodically to OEA whether the "digital computers" and related equipment therefor are still being used for the approved purposes at the authorized location.

Note: The visitation requirements of sub-paragraphs (c)(3) and (c)(4) above will be waived for remote "terminal devices" if they consist only of peripheral equipment freed from control by sub-paragraph (b)(2)(v) above.

Advisory Note 13: Reserved.

Advisory Note 14: Reserved.

Advisory Note 15: Reserved.

Advisory Note 16: The following are definitions of terms used in ECCN 15595A:

"access rate"—
(a) Of an input/output control unit—
   (R1) —
   Either the "access rate" of an input/output control unit (R1) or the sum of the individual "access rates" of all independent seek mechanisms (R1), whichever is smaller.
   Thus: R1 = min [R1, SUM R1]
(b) Of an input/output control unit
   (R1) —
   (1) With rotational position sensing (rps), the sum of the individual "access rates" of all independent seek mechanisms (R1) connected to the control unit.
   Thus: R1 = SUM R1 (with rps); or
   (2) Without rotational position sensing (rps), the number (C) of independent read/write channels connected to the control unit divided by the least 'latency time' (tlat) of any connected independent seek mechanism.
   Thus: R1 = C / tlat

(c) Of a seek mechanism (R1) —
The reciprocal of the 'average access time' (tav) of the seek mechanism.
   Thus: R1 = 1 / tav

'Average access time' of a seek mechanism (tav) —
The sum of the 'average seek time' (t1a) and the 'latency time' (t1).
Thus: t1 = t1a + t1

'Average seek time' (t1a) —
The sum of the 'maximum seek time' (tmax) and twice the 'minimum seek time' (tmin), divided by three.
Thus: t1a = tmax / 2 + tmin

'Minimum seek time' (tmin) —
(1) For fixed head devices, it is zero; or
(2) For moving head or moving media devices, the rated time to move between the two most widely separated tracks.

'Maximum seek time' (tmax) —
(1) For fixed head devices, it is zero; or
(2) For moving head or moving media devices, the rated time to move from one track to an adjacent track.

'Latency time' (t1) —
The rotational period divided by twice the number of independent read/write heads per track.

"Analog computer"—
Equipment that can, in the form of one or more continuous variables:
(a) Accept data;
(b) Process data; and
(c) Provide output of data.

"Associated" with equipment or systems—
(a) Can feasibly be either:
   (1) Removed from such equipment or systems; or
   (2) Used for other purposes; and
(b) Is not essential to the operation of such equipment or systems.

"Communication channel"—
The transmission path or circuit including the terminating transmission and receiving equipment (modems) for transferring digital information between distant locations.

"Computer operating area"—
The immediate contiguous and accessible area around the electronic computer, where the normal operating, support and service functions take place.

"Computer using facility"—
The end-user's contiguous and accessible facilities:
(a) Housing the "computer operating area" and those end-user functions that are being supported by the stated application of the electronic computer and its related equipment; and
(b) Not extending beyond 1,500 meters in any direction from the center of the "computer operating area".

"Cumulative total processing data rate"—
The sum of all "total processing data rates" in a given transaction.

"Data device"—
Equipment capable of transmitting or receiving sequences of digital information.

"Data (message) switching"—
The technique, including but not limited to store-and-forward or packet switching, for:
(a) Accepting data groups (including message, packets, or other digital or telegraphic information groups that are transmitted as a composite whole);
(b) Storing (buffering) data groups as necessary;
(c) Processing part or all of the data groups, as necessary, for the purpose of:
   (1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling);
   (2) Transmission; or
   (3) Multiplexing; and
   (d) Retransmitting (processed) data groups when transmission or receiving facilities are available.

"Data signalling rate"—
The rate as defined in ITU Recommendation 53-36, taking into account that, for non-binary modulation, baud and bit per second are not equal.

"Digital computer"—
Equipment that can, in the form of one or more discrete variables:
(a) Accept data;
(b) Store data or instructions in fixed or alterable (writable) storage devices;
(c) Process data by means of a stored sequence of instructions that is modifiable; and
(d) Provide output of data.

Note: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.
"Embedded" in equipment or systems—
Can feasibly be neither:
(a) Removed from such equipment or systems; nor
(b) Used for other purposes.

Note: When applied to "digital computer", "embedded" means that a "digital computer":
1. Cannot be removed from the equipment (or system) without rendering both "digital computer" and equipment (or system) inoperable, and without causing damage to the "digital computer" that would require substantial rework before the "digital computer" could be used for any other purpose, and
2. Is appropriate for the equipment (or system) it is "embedded" in, and of the same type as would be used in that equipment (or system) when supplied to general users in Western countries.

"Equivalent multiply rate"—
The maximally achievable number of multiplication operations that can be performed per second considering that, in the case of simultaneous multiplication operations, all multiplication rates have to be summed in order to arrive at the "equivalent multiply rate":
(a) Assuming (1) Optimal operand locations in the "most immediate storage"; and
(2) Operand lengths at least 16 bit, or more if this allows for faster operation; and
(b) Neglecting (1) Set-up operations; (2) Pipeline filling operations; (3) Initialization; (4) Interrupts; and
(5) Data reordering times.

Note: Simultaneous multiplication operations can occur because of:
(a) Multiple arithmetic units for operations such as complex multiplication, convolution or recursive filtering;
(b) Parallel pipelining;
(c) More than one arithmetic unit in one data processing unit; or
(d) More than one data processing unit in one system.

"Fault tolerance"—
The capability to perform correctly without human intervention after failure of any 'assembly', so that there is no single point in the system the failure of which could cause catastrophic failure of the system's functioning.

"Assembly"—
A number of components (i.e., circuit elements, discrete components, microcircuits) connected together to perform a specific function or functions, replaceable as an entity (and normally capable of being disassembled).

"Firmware"—
See "microprogram"

"Gross capacity"—
The product of:
(a) The maximum number of binary digit (bit) positions per unformatted track; and
(b) The total number of tracks including spare tracks and tracks not accessible to the user.

"Hybrid computer"—
Equipment that can:
(a) Accept data;
(b) Process data, in both analog and digital representations; and
(c) Provide output of data.

"Image digitizer"—
A device for directly converting an analog representation of an image into a digital representation.

"Image enhancement"—
The processing of externally derived information-bearing images by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., Fast Fourier Transform or Walsh transform). This does not include algorithms using only linear or rotational transformation of a single image, such as translation, feature extraction, registration or false coloration.

"Incorporated" in equipment or systems—
(a) Can feasibly be either:
(1) Removed from such equipment or systems; or
(2) Used for other purposes; and
(b) Is essential to the operation of such equipment or systems.

"Local area network"—
A data communication system that:
(a) Allows an arbitrary number of independent "data devices" to communicate directly with each other; and
(b) Is confined to a geographical area of moderate size (e.g., office building, plant, campus, warehouse).

"Main storage"—
The primary storage for data or instructions for rapid access by a central processing unit. It consists of the internal storage of a "digital computer" and any hierarchical extension thereto, such as cache storage or non-sequentially accessed extended storage.

"Maximum bit packing density"—

"Maximum bit transfer rate"—
(a) Of a drum or disk drive (Rdmax) is the product of:
(1) The maximum number of binary digit (bit) positions per unformatted track; and
(2) The number of tracks that simultaneously can be read or written; Divided by the rotational period;
(b) Of a magnetic tape drive (Rtmax), is the product of:
(1) The "minimum bit packing density";
(2) The number of data bits per character (ANSI) or per row (ISO); and
(3) The maximum tape read/write speed.

"Microprogram"—
A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"Most immediate storage"—
The portion of the "main storage" most directly accessible by the central processing unit:
(a) For single level "main storage", this is the internal storage; or
(b) For hierarchical "main storage", this is:
(1) The cache storage;
(2) The instruction stack; or
(3) The data stack.

"Multi-data-stream processing"—
The "microprogram" or equipment architecture technique that permits processing two or more data-sequences under the control of one or more instruction sequences by means such as:
(a) Parallel processing; or
(b) Structured arrays of processing elements.

"Net capacity"—
Of a drum, disk or cartridge tape streamer tape drive, or a bubble memory:
The total capacity designed to be accessible to the "digital computer" excluding error control bits.

"Non-volatile storage"—
A storage device the contents of which are not lost when power is removed.

"Other peripheral device"—
"A data device" that is:
(a) Peripheral to a central processing unit—"main storage" combination; and
(b) Not an input/output control unit—drum, disk or magnetic tape drive or bubble memory combination.

"Principal element"—
A "digital computer" or "related equipment" that is:
(a) Either "embedded" or "incorporated" in another equipment or system; and
(b) In replacement value more than 35% of the replacement value of the total equipment or system, i.e., including the "digital computer" or "related equipment".

"Program"—
A sequence of instructions to carry out a process in or convertible into, a form executable by an electronic computer.

"Real time processing"—
Processing of data by an electronic computer in response to an external event according to time requirements imposed by the external event.

"Related equipment"—
Equipment "embedded" in, "incorporated" in, or "associated" with electronic computers, as follows:
(a) Equipment for interconnecting "analog computers" with "digital computers";
(b) Equipment for interconnecting "digital computers";
(c) Equipment for interfacing electronic computers to "local area networks" or to "wide area networks";
(d) Communication control units;
(e) Other input/output (I/O) control units;
(f) Recording or reproducing equipment referred to ECCN 1565 by ECCN 1572;
(g) Displays; or
(h) Other peripheral equipment.

Note: "Related equipment" that contains an "embedded" or "incorporated" electronic computer, but lacks "user-accessible programmability", does not thereby fall within the definition of an electronic computer.

"Signal processing"—
The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g. Fast Fourier Transform or Walsh Transform).

"Software"—
A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Stored program controlled circuit switching"—
The technique for establishing, on demand and until released, a direct (space division switching) or logical (time division switching) connection between circuits based on switching control information derived from any source or circuit and processed according to the stored program by one or more electronic computers.

"Terminal device"—
A "data device" that:
(a) Does not include process control sensing and actuating devices; and
(b) Is capable of:
(1) Accepting or producing a physical record;
(2) Accepting a manual input; or
(3) Producing a visual output.

Note: Normal groupings of such equipment (e.g., a combination of paper tape punch/reader and printer), connected to a single data channel or "communication channel", shall be considered as a single "terminal device".

"Total access rate" (Rₜₐₑ) —
The sum of the individual "access rates" of all input/output control units — drum or disk drive combinations (Rₛₑ) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this "total access rate".

Thus: Rₜₐₑ = Σ Rₛₑ

"Total connected capacity" —
The storage capacity excluding error control bits, word marker bits, and flag bits.

"Total data signalling rate" —
The sum of the individual "data signalling rates" of all "communication channels" that:
(a) Have been provided with the system; and
(b) Can be sustained simultaneously assuming the configuration of the equipment that would maximize this sum of rates.

"Total internal storage available to the user" —
The sum of the individual capacities of all internal user-alterable or user-replaceable storage devices that may be:
(a) Included in the equipment at the same time; and
(b) Used to store "software" instructions or data.

"Total processing data rate" —
(a) Of a single central processing unit, as its "processing data rate";
(b) Of multiple central processing units that do not share direct access to a common "main storage", i.e., the individual "processing data rate" of each central processing unit, i.e., each unit is separately treated as a single central processing unit as in (a) above; or
(c) Of multiple central processing units that partially or fully share direct access to a common "main storage" at any level is the sum of:
(1) The highest of the individual "processing data rates" of all central processing units; and
(2) 0.75 times the "processing data rate" of each remaining central processing unit, sharing the same "main storage";
assuming the configuration of equipment that would maximize this sum of rates.

"Processing data rate" —
The sum of:
(a) The "floating point processing data rate" (R_f); or
(b) The "fixed point processing data rate" (R_f).

For the "processing data rate" of a central processing unit implemented with two or more microprocessor microcircuits, not including any dedicated microprocessor microcircuit used solely for display, keyboard or input/output control, is the sum of the individual "processing data rates" of all these microprocessor microcircuits.

"Floating point processing data rate" (R_f) —
The sum of:
(1) 0.65 times the 'number of bits in a fixed point instruction' (n_f) or 0.65 times the 'number of bits in a floating point instruction' (n_f); if no fixed point instructions are implemented;
(2) 0.15 times the 'number of bits in a floating point instruction' (n_f);
(3) 0.40 times the 'number of bits in a floating point operand' (n_f) or 0.40 times the 'number of bits in a floating point operand' (n_f) if the floating point instructions are implemented; and
(4) 0.15 times the 'number of bits in a floating point operand' (n_f).

Divided by the sum of:
(1) 0.65 times the 'execution time' for a fixed point addition (t_f) or for a floating point addition (t_f), if no fixed point instructions are implemented;
(2) 0.65 times the 'execution time' for a floating point addition (t_f); and
(3) 0.03 times the 'execution time' for a floating point multiplication (t_m) or for the fastest available subroutine (t_m) to simulate a floating point multiplication instruction, if no floating point multiplication instructions are implemented.

Thus:
\[
R_f = \frac{(0.85 n_a + (0.15)n_{而又} + (0.40) n_{而又} + (0.15)n_{而又}}{(0.85)n_{而又} + (0.09)n_{而又} + (0.08)n_{而又}}, \quad \text{or}
\]

If no fixed point instructions are implemented then:

\[
R_f = \frac{(0.00)n_a + (0.55)n_{而又}}{(0.94)n_{而又} + (0.06)n_{而又}}, \quad \text{or}
\]

If no floating point multiplication instructions are implemented \((t_{而又} = t_{而又})\) then:

\[
R_f = \frac{(0.85)n_{而又} + (0.15)n_{而又} + (0.40)n_{而又} + (0.15)n_{而又}}{(0.85)n_{而又} + (0.09)n_{而又} + (0.08)n_{而又}},
\]

Note: If a "digital computer" has neither fixed point addition nor floating point multiplication instructions, then its 'floating point processing data rate' is equal to zero.

'Fixed point processing data rate' \((R_f)\) —

The sum of:
- (1) 0.85 times the 'number of bits in a fixed point addition instruction' \((n_{而又})\);
- (2) 0.15 times the 'number of bits in a fixed point multiplication instruction' \((n_{而又})\); and
- (3) 0.55 times the 'number of bits in a fixed point operand' \((n_{而又})\);

divided by the sum of:
- (1) 0.85 times the 'execution time' for a fixed point addition \((t_{而又})\); and
- (2) 0.15 times the 'execution time' for a fixed point multiplication \((t_{而又})\) or for the fastest available subroutine \((t_{而又})\) to simulate a fixed point multiplication instruction is no fixed point multiplication instructions are implemented.

Thus:

\[
R_f = \frac{(0.85)n_{而又} + (0.15)n_{而又} + (0.55)n_{而又}}{(0.85)t_{而又} + (0.15)t_{而又}}, \quad \text{or}
\]

if no fixed point multiplication instructions are implemented \((t_{而又} = t_{而又})\) then:

\[
R_f = \frac{(0.85)n_{而又} + (0.15)n_{而又} + (0.55)n_{而又}}{(0.85)t_{而又} + (0.15)t_{而又}}.
\]

Note: If a "digital computer" has neither fixed point addition nor floating point multiplication instructions, then its 'fixed point processing data rate' is equal to zero.

'Floating point processing data rate' \((R_f)\) —

\[
R_f = \frac{(0.85)n_{而又} + (0.15)n_{而又} + (0.40)n_{而又} + (0.15)n_{而又}}{(0.85)n_{而又} + (0.09)n_{而又} + (0.08)n_{而又}}, \quad \text{or}
\]

If no floating point multiplication instructions are implemented \((t_{而又} = t_{而又})\) then:

\[
R_f = \frac{(0.85)n_{而又} + (0.15)n_{而又} + (0.55)n_{而又}}{(0.85)t_{而又} + (0.15)t_{而又}}, \quad \text{or}
\]

The appropriate shortest single fixed or floating point instruction length that permits full direct addressing of the "main storage".

Note: When multiple instructions are required to simulate an appropriate single instruction, the number of bits in the above instructions is defined as 16 bits plus the number of bits \(b_{而又}, b_{而又}, b_{而又}\) that permits full direct addressing of the "main storage".

Thus:

\[
n_{而又} = 16 + b_{而又}, \quad n_{而又} = 16 + b_{而又}, \quad n_{而又} = 16 + b_{而又},
\]

'Number of bits in fixed point operand' \((n_{而又})\) —

(a) The shortest fixed point operand length; or
(b) 16 bit; whichever is greater.

'Number of bits in a floating point operand' \((n_{而又})\) —

(a) The shortest fixed point operand length; or
(b) 30 bit; whichever is greater.

Note: If the addressing capability of an instruction is expanded by using a base register, then the 'number of bits in an instruction, fixed or floating point, addition or multiplication' is the number of bits in the instruction with the standard address length including the number of bits necessary to use the base register.

'Execution time' —

(a) The time certified or openly published by the manufacturer for the execution of the fastest appropriate instruction, under the following conditions:
- (1) No indexing or indirect operations are included;
- (2) The instruction is in the "most immediate storage";
- (3) One operand is in the accumulator or in a location of the "most immediate storage" that is acting as the accumulator;
- (4) The second operand is in the "most immediate storage"; and
- (5) The result is left in the accumulator or the same location in the "most immediate storage" that is acting as the accumulator;
(b) If only the maximum and minimum execution times of the instructions are published, the sum of:
(i) The maximum execution time of an instruction (tmax) and
(ii) Twice the minimum execution time of this instruction (tmin)
divided by three.
Thus:
\[
\frac{t_{\text{max}} + 2t_{\text{min}}}{3}
\]

(c) For central processing units that simultaneously fetch more than one instruction from one storage location:
The average of the 'execution times' of the instructions are calculated by:
\[
\text{Average}_{\text{execution times}} = \frac{1}{n} \sum_{i=1}^{n} t_i
\]
where \(n\) is the number of instructions fetched.

(d) If the longest fixed point operand length is smaller than 16 bits, then use the time required for the fastest available subroutine to simulate a 16 bit fixed point operation.

Note: If the addressing capability of an instruction is expanded by using a base register, then the 'execution times' shall include the time for adding the content of the base register to the address part of the instruction.

"Total transfer rate":
- Of the input/output control unit—
  (a) Drum or cartridge-type streamer tape drive combinations (Rtotal): The sum of the individual 'transfer rates' of all input/output control unit—
  (i) Drum or cartridge-type streamer tape drive combinations (Rd)
  provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize the sum of rates.
  Thus:
  \[
  R_{\text{total}} = \sum R_d
  \]
- Of an input/output control unit—
  (i) Drum or cartridge-type streamer tape drive combinations (R1):
  \[
  R_1 = R_{\text{max}} - \text{t}_{\text{max}} + \frac{1}{2}
  \]
- Of an input/output control unit—
  (ii) Magnetic tape drive combinations (Rm): The sum of the individual 'transfer rates' of all input/output control unit—
  (i) Magnetic tape drive combinations (Rm)
  provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize the sum of rates.
  Thus:
  \[
  R_{\text{m}} = \sum R_m
  \]
- Of an input/output control unit—
  (iii) Cartridge-type streamer tape drive combinations (Rc):
  \[
  R_c = R_{\text{max}} - \text{t}_{\text{max}} + \frac{1}{2}
  \]
- Of an input/output control unit—
  (iv) Magnetic tape drive combinations (Rm): The sum of the individual 'transfer rates' of all input/output control unit—
  (i) Magnetic tape drive combinations (Rm)
  provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize the sum of rates.
  Thus:
  \[
  R_{\text{m}} = \sum R_m
  \]

Note: The size of "virtual storage" is limited by the addressing scheme of the computer system and not by the actual number of "main storage" locations.

"Wide area network":
- A data communication system that:
  (a) Allows an arbitrary number of independent "data devices" to communicate with each other;
  (b) May include "local area networks";
  (c) Is designed to interconnect geographically dispersed facilities.

Advisory Note 17E: The following are illustrative examples of how to calculate various parameters:

<table>
<thead>
<tr>
<th>Part A. Conversion of Bytes to bit in computing storage limits:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) 1 M Byte=1,048,576 Byte</td>
</tr>
<tr>
<td>(b) 1 K Byte=1,024 Byte</td>
</tr>
<tr>
<td>(c) 1 Byte=8 bit or 9 bit</td>
</tr>
</tbody>
</table>

Part B. Limits on "total connected capacity" of "main storage"
The limits in the various Advisory Notes to ECCN 1555 assume a 9 bit Byte and an appropriate amount of cache storage (16, 32, 64 or 128 K Byte), as follows (although other combinations within these limits would be permissible):

<table>
<thead>
<tr>
<th>Internal Storage (M Byte)</th>
<th>Cache Storage (K Byte)</th>
<th>Total Connected Capacity (M Byte)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>0.05</td>
<td>0.75</td>
<td>0.8</td>
</tr>
<tr>
<td>0.75</td>
<td>0.1</td>
<td>0.85</td>
</tr>
<tr>
<td>1.0</td>
<td>0.05</td>
<td>1.05</td>
</tr>
<tr>
<td>12.0</td>
<td>0.1</td>
<td>12.15</td>
</tr>
</tbody>
</table>
Advisory Note 18: Licenses are likely to be approved for export to satisfactory end-users in the People’s Republic of China of the following equipment:

(a) Digital computer systems that do not exceed the following technical limits:

- PDR=155 Mbits/second
- Internal memory=72 Mbits
- EBTR=17 Mbits/second
- Total Connected net Capacity of Peripheral Memory Devices=74,000 Mbits

(b) Graphic displays exhibiting all of the following characteristics:

- Not exceeding 19-inch diagonal of viewing area,
- Not exceeding 1024 x 1024 displayable pixels or picture elements,
- Not exceeding 9 megabits of refresh memory,
- Having not more than 512 shades of gray or color (8 bits per pixel);
- Plotters and digitizers of the following description:
  - Having an accuracy not better than 0.002 inches and
  - Having a table size not exceeding 100 inches x 100 inches;
- Array transform processors that meet either of the following requirements:
  - Maximum rate of multiply operations less than or equal to 2 million per second, or
  - Not less than 40 milliseconds for performing an FFT for 1024 complex points; and
- 8-bit and 16-bit home, personal and small business microcomputers having a fixed point processing data rate (XPDR) of 26.0 or less, and equipped with peripherals that are standard and normally supplied with the microcomputer (see section 376.10(a)(4) [xixiv] for the definition of “fixed point processing data rate”).

5. Supplement No. 1 to section 399.1 (the Commodity Control List) is amended by adding in Commodity Group 5, Electronics and Precision Instruments, a new Export Control Commodity Number (ECCN) 1566A (in numerical order, disregarding the first digit), reading as follows:

<table>
<thead>
<tr>
<th>Cache Storage (M Byte)</th>
<th>Total Connected Capacity (M bits/second)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>48</td>
</tr>
<tr>
<td>25</td>
<td>64</td>
</tr>
</tbody>
</table>

1566A “Software” and technology therefor for equipment described in the List below. (Export controls on “specially designed software” for the use of equipment described in other CCL entries are contained in the appropriate ECCN.)

(See also Part 379 for additional controls on technology.)

Controls for ECCN 1566A.

Unit: Not applicable.

Validated License Required: Country Groups QSTVWXYZ.

GLV § Value Limit: $0 for all destinations.

Processing Code: CS for main frame systems; MT for microprocessor based systems.

Reason for Control: National security; foreign policy; nuclear non-proliferation.

Special Licenses Available: See Part 373.

Special South Africa and Namibia Controls: Foreign policy export controls for ECCN 1566A apply only to software related to computer equipment destined for the Department of Cooperation and Development, the Department of Internal Affairs, the Department of Community Development, the Department of Justice, the Department of Manpower Utilization, and administrative bodies of the “Homelands” that carry out similar functions in the Republic of South Africa and Namibia. Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of software related to computers that would not be used to enforce the South African policy of apartheid.

Nuclear Non-Proliferation Controls: Software related to the following equipment is subject to nuclear non-proliferation controls and requires a validated license for Country Groups QSTVWXYZ, and, in the case of (a)(1) through (4) below, to Canada:

(a) Electronic computers intended for ultimate consignees engaged directly or indirectly in any of the following activities:

- Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;

(b) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of irradiated special nuclear material, for the production of heavy water, for the separation of isotopes of any source or special nuclear material, or specially designed for the fabrication of nuclear reactor fuel containing plutonium;

(c) Designing, assisting in the design of, constructing, fabricating or furnishing equipment or components specially designed, modified or adapted for use in such facilities; or

(d) Training personnel in any of the above activities; and

(e) Advanced electronic digital computers with a processing data rate of 20 million bits per second or more (including digital differential analyzers) except:

(1) Software related to electronic computers that do not exceed a processing data rate of 225 million bits per second are not subject to nuclear non-proliferation controls for destinations listed in Supp. No. 2 to Part 373 of the Export Administration Regulations unless the activities cited in (a) above are involved; or

(2) Software related to electronic computers that do not exceed a processing data rate of 60 million bits per second are not subject to nuclear non-proliferation controls for destinations listed in Supp. Nos. 2 and 3 to Part 373 of the Export Administration Regulations unless the activities cited in (a) above are involved.

Note—Refer to § 376.10 of the Regulations for specific information required to be filed with applications for QWY destinations and the People’s Republic of China [PRC]. For all destinations other that QWY countries or PRC, follow general application instructions and, in addition, indicate in the commodity description column on Forms ITA-622P and ITA-690P the “processing data rate” Section 376.10 of the Regulations provides the formula for calculating that rate.

Note—Software related to certain digital computers and/or devices and related peripherals may be exported or reexported under General License G-DEST to all destinations except those in Country Groups B & Z, subject to the provisions of § 376.10(a)(5) of the Regulations.

Note—Distribution Licenses are not valid for the export of any software related to computers to ultimate consignees engaged directly or indirectly in any of the following activities—

(a) Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;

(b) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of.
Software not falling within any of the definitions of the other categories of "software".

3. "Specially designed software" is defined as:

The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible equipment perform the same function requires:

(a) Modification of this "software"; or
(b) Addition of "programs".

(For a complete list of definitions of terms used in this ECCN 15659, see Advisory Note 12 below; see also ECCN 15655 for additional definitions relating to electronic computers.)

List of Software Controlled by ECCN 15655A:

(a) "Software" of whatever category, as follows:

1. "Software"—

A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Program"—

A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Microprogram"—

A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

2. "Software" is categorized as follows (there is a close relationship and possible overlap among these categories):

"Development system"—

"Software" to develop or produce "software". This includes "software" to manage those activities. Examples of a "development system" are programming support environments, software development environments, and programmer productivity aids.

"Programmimg system"—

"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into executable code written in an "object code" or "object language".

"Diagnostic system"—

"Software" to isolate or detect "software" or equipment malfunctions.

"Maintenance system"—

"Software" to:

(a) Modify "software" or its associated documentation in order to correct faults, or for other updating purposes; or
(b) "Maintain equipment;"

"Operating system"—

"Software" to control:

(i) The operation of a "digital computer" or of "related equipment"; or
(ii) The loading or execution of "programs;"

"Application software"—

"Software" designed or modified for the design, development or production of items controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810.

(b) "Specially designed software", as follows:

1. "Development systems":

(i) "High-level language" "development systems" designed for, or containing "programs" or "databases" special to the development or production of:

(A) "Specially designed software" controlled by other ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810;

(B) "Software" controlled by sub-parag 10 CFR 810;

(ii) Compilers or interpreters designed or modified for use as part of such a "development system";

(ii) "High-level language" "development systems" designed for, or containing the "software" tools and "databases" for, the development or production of "software", or any subset designed or modified for use as part of a "development system" such as or equivalent to:

(A) Ada Programming Support Environment (APSE);

(B) Any subset of APSE, as follows:

(i) Kernel APSE;

(ii) Minimal APSE;

(iii) Ada compilers specially designed as an integrated subset of APSE; or

(iv) Any other subset of APSE;

(C) Any superset of APSE; or

(D) Any derivative of APSE;

(ii) "Programming systems":

(i) "Cross-hosted" compilers and "cross-hosted" assemblers;

(ii) Compilers or interpreters designed or modified for use as part of a "development system" controlled by sub-paragraph (b)(1) above;

(iii) Decompilers or other "software" that convert "programs" in "object" or assembly language into a higher level language, except simple debugging "application software", such as mapping, tracing, checkpoint/restart, breakpoint, dumping and the display of the storage contents or their assembly language equivalent;

(iii) "Diagnostic systems" or "maintenance systems" designed or modified for use as part of a
"development system" controlled by sub-paragraph (b)(1) above:

(i) "Operating systems" designed or modified for "digital computers" or "related equipment" exceeding any of the following limits:

(A) Central processing unit—"main storage" combinations:

(1) "Total processing data rate"—48 million bit per second;

(2) "Total connected capacity" of "main storage"—25.2 million bit;

(3) "Virtual storage" capability—512 M Byte;

(B) Input/output control unit—drum, disk or cartridge-type streamer tape drive combinations:

(1) "Total transfer rate"—15 million bit per second;

(2) "Total access rate"—320 access per second;

(3) "Total connected "net capacity"—7,000 bit per second;

(C) Maximum bit transfer rate—1,600 bit per second;

(D) Input/output control unit—bubble memory combinations:

(1) "Total transfer rate"—5.2 million bit per second;

(2) Number of magnetic tape drives—twelve;

(3) Maximum bit transfer rate—of any magnetic tape drive—2.8 million bit per second;

(4) Maximum bit packing density—63 bit per mm. (1,600 bit per inch) per track;

(5) Maximum tape read/write speed—508 cm. (200 inch) per second;

Note: Sub-paragraph (b) of this section does not control "operating systems" designed or modified for "digital computers" or "related equipment" exceeding the above limits.

(a) Not exceeding the above limits even when the "operating systems" can also be used on "digital computers" or "related equipment" exceeding the above limits; or

(b) Belonging to a series containing models exceeding the above limits, if the "operating systems" are used on "digital computers" or "related equipment" of the series that do not exceed the above limits;

(ii) "Operating systems" providing online transaction data processing that permit integrated teleprocessing and "on-line updating" of "databases";

(iii) "Application software"

(1) "Software" for crytologic or crytanalytic applications;

(2) Artificial intelligence "software", including "software" normally classified as expert systems, that enables a "digital computer" to perform functions normally associated with human perception and reasoning or learning;

(iii) "Database management systems" designed to handle "distributed databases" for:

(A) Fast access by using techniques such as maintenance of duplicated "databases";

(B) Integrating data at a single site from independent remote "databases";

(C) "Software" designed to adapt "software resident on one "digital computer" for use on another "digital computer", except "software" to adapt between two legally exported machines.

Advisory Note 1: Reserved.

Advisory Note 2: Reserved.

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" initially exported to those destinations before January 1, 1984, provided that:

(a) The "software" is identical to and in the same language form (source or object) as initially exported, allowing minor updates for the correction of errors that do not modify the initially exported functions;

(b) The accompanying documentation does not exceed the level of the initial export;

(c) The "software" is exported to the same controlled destination as the initial export.

Advisory Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" controlled by sub-paragraph (a)(1) above, not otherwise controlled by this ECCN or other ECCNs on the Commodity Control List identified by the code letter "A", provided that:

(a) The "software" is designed for and limited to the following:

(1) The approved end use of legally exported equipment or systems in conjunction with any computer that is part of a computer series produced within a controlled area and based on a design originating in a COCOM country; or

(2) The monitoring and control of industrial processes limited to the production of items not described by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810

(b) No restricted technical data is provided.

Advisory Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" not exceeding 5,000 statements in "source language", excluding data, provided that:

(a) The "software" is neither designed nor modified for use as a module of a larger "software" module or system that in total exceeds this limit;

(b) The "software" is not controlled by sub-paragraph (b)(6) above; and

(c) The Office of Export Administration is reasonably satisfied that:

(1) The "software" will be used primarily for the specific non-strategic application for which the export would be approved;

(2) The type and characteristics of such "software" are reasonable for this application; and

(3) The "software" will not be used for the design, development or production of items controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810.

Advisory Note 6: Reserved.

Advisory Note 7: Reserved.

Advisory Note 8: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" designed to handle "distributed databases" for:

(a) Fast access by using techniques such as maintenance of duplicated "databases"; or

(b) Integrating data at a single site from independent remote "databases".

(c) "Software" designed to adapt "software resident on one "digital computer" for use on another "digital computer", except "software" to adapt between two legally exported machines.

Advisory Note: Reserved.

Advisory Note 2: Reserved.

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" initially exported to new users in controlled areas and based on a design originating in a COCOM country; or

(b) The "software" is not controlled by sub-paragraph (a)(1) above, not otherwise controlled by this ECCN or other ECCNs on the Commodity Control List identified by the code letter "A", provided that:

(a) The "software" is designed for and limited to the following:

(1) The approved end use of legally exported equipment or systems in conjunction with any computer that is part of a computer series produced within a controlled area and based on a design originating in a COCOM country; or

(2) The monitoring and control of industrial processes limited to the production of items not described by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810 and

(b) No restricted technical data is provided.
is to be the minimum necessary for the use (i.e., installation, operation and maintenance) of the "software".

(f) In addition to the above limitations, the only other system "software" allowed is the minimum "programming system" for the maintenance of the "software";

(g) A signed statement of the end-user or importing agency containing a full description of the "software" and its characteristics vis-a-vis the subparagraphs above, its intended application and workload and a complete identification of all end-users and their activities is provided;

(h) The "software" will not be used to provide or process data associated with military control centers or military radars or otherwise be associated with such radars or centers; and

(i) The type and characteristics of the "software" are reasonable for the specific civil Air Traffic Control applications.

Advisory Note 9: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "operating systems" controlled only by sub-paragraph (b)(4)(ii) above when supplied with "digital computers" and "related equipment" exported under the provisions of ECCN 1565, Advisory Notes 9 and 12, provided that these "operating systems" are:

(a) For use with a "digital computer" exported under the provisions of ECCN 1565;

(b) In machine executable version;

(c) Limited to the minimum "standard commercially available" "software";

and

(d) Not designed or modified for "database management systems" controlled by sub-paragraph (b)(5)(iii) above.

Advisory Note 10: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" controlled by subparagraph (a)(3)(ii) above for "digital computers" and "related equipment" exported under the provisions of ECCN 1565, Advisory Notes 5, or ECCN 15655, Advisory Notes 5 and 9, provided that:

(a) The "software" is limited to:

(1) The minimum necessary for the approved application;

(2) Machine executable form; and

(3) "Specially designed software" for:

(i) Equipment likely to be approved for export solely under ECCN 1529, Advisory Note 5;

(ii) Equipment likely to be approved for export under ECCN 1565, Advisory Note 5, for one or more of the functions described in ECCN 1565(h)(1)(j)(A), (B) or (D); or

(iii) Equipment likely to be approved for export under ECCN 1565, Advisory Note 9, for one or more of the functions described in ECCN 1565(h)(1)(j)(A), (B) or (C);

(b) The "specially designed software" for "signal processing" and "image enhancement" does not provide for more than one of the following:

(1) Time compression; or

(2) Transformations between domains (e.g. Fast Fourier Transform or Walsh Transform).

Advisory Note 11: Licenses will be favorably considered for export to satisfactory end-users in Country Groups QWY and the People's Republic of China (PRC) of "software" controlled by sub-paragraph (a)(3)(ii) above for "digital computers" and "related equipment" exported under the provisions of ECCN 1565, Advisory Note 12, provided that the "software" is limited to:

(a) "Software" for one or more of the functions described in ECCN 1565(h)(1)(j)(A), (B) or (C);

(b) The minimum necessary for the approved applications; and

(c) Machine executable form.

Advisory Note 12: Definitions of Terms Used in ECCN 1565:

"Analog computer"—

Equipment that can, in the form of one or more continuous variables:

(a) Accept data;

(b) Process data; and

(c) Provide output of data.

"Application software"—

Software not falling within any of the definitions of the other categories of "software".

"Cross-hosted"—

For "programming systems", those that produce "programs" for a model of electronic computer different from that used to run the "programming system", i.e., they have code generators for equipment different from the host computer.

"Database"—

A collection of data, defined for one or more particular applications, which is physically located and maintained in one or more electronic computers or "related equipment".

"Database management system"—

"Application software" to manage and maintain a "database" in one or more prescribed logical structures for use by other "application software" independent of the specific methods used to store or retrieve the "database".

"Development system"—

"Software" to develop or produce "software". This includes "software" to manage those activities. Examples of a "development system" are programming support environments, software development environments, and programmer productivity aids.

"Diagnostic system"—

"Software" to isolate or detect "software" or equipment malfunctions.

"Digital computer"—

Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; and

(d) Provide output of data.

Note: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

"Distributed database"—

A "database" physically located and maintained in part or as a whole in two or more interconnected electronic computers or "related equipment", such that inquires from one location can involve "database" access in other interconnected electronic computers or "related equipment".

"Firmware"—

See "microprogram".

"High-level language"—

A programming language that does not reflect the structure of any one given electronic computer or that of any one given class of electronic computers.

"Hybrid computer"—

Equipment that can:

(a) Access data;

(b) Process data, in both analog and digital representations; and

(c) Provide output of data.

"Maintenance system"—

"Software" to:

(a) Modify "software" or its associated documentation in order to correct faults, or for other updating purposes; or

(b) Maintain equipment.

"Microprogram"—

A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"Object code" or "object language"—

See "programming system".

"On-line updating"—
Processing in which the contents of a "database" can be amended within a period of time useful to interact with an external request.

"Operating system"—
"Software" to control:
(a) The operation of a "digital computer" or of "related equipment"; or
(b) The loading or execution of "programs".

"Program"—
A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Programming system"—
"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into equipment executable form ("object code" or "object language").

"Related equipment"—
Equipment "embedded" in, "incorporated" in, or "associated" with electronic computers, as follows:
(a) Equipment for interconnecting "analog computers" with "digital computers";
(b) Equipment for interconnecting "digital computers";
(c) Equipment interfacing electronic computers to "local area networks" or to "wide area networks";
(d) Communication control units;
(e) Other input/output (I/O) control units;
(f) Recording or reproducing equipment referred to ECCN 2565 by ECCN 1572;
(g) Displays; or
(h) Other peripheral equipment.

Notes: "Related equipment" containing an "embedded" or "incorporated" electronic computer, but lacking "user accessible programmability", does not thereby fall within the definition of an electronic computer.

"Self-hosted"—
For "programming systems", those producing "programs" for the same model of electronic computer as that used to run the "programming system", i.e., they only have code generators for the host computer.

"Software"—
A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Source code" or "source language"—
See "programming system".

"Specially designed software"—
The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible equipment perform the same function requires:

(a) Modification of this "software", or
(b) Addition of "programs".

"Standard commercially available"—
For "software", that which is:
(a) Commonly supplied to general purchasers or users of equipment outside controlled areas, but not precluding the personalization of certain parameters for individual customers wherever located;
(b) Designed and produced for civil applications.
(c) Not designed or modified for any "digital computer" that is part of a "digital computer" series designed and produced within a controlled area; and
(d) Supplied in a commercially distributed form.

TECHNICAL NOTE: In the case of "software" for mainframe "digital computers" that may have a "virtual storage capability" exceeding the limit of sub-paragraph (b)(4)(i)(A) and that may be considered for export under the conditions of ECCN 1565, Advisory Notes 9 & 12, the limitation of the "virtual storage capability" of 512 MByte does not apply.

Advisory Note 13: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China (PRC) of software that has been approved previously for export and standard commercial packages for business applications, for example:
(1) Operating systems for transaction processing and real-time updating, and
(2) Relational database management systems.

6. Supplement No. 1 to section 393.1 (the Commodity Control List) is amended by adding a new entry 1557 in numerical order, disregarding the first digit to Commodity Group 5, Electronics and Precision Instruments, reading as follows:

1557 A Stored program controlled communication switching equipment or systems and technology therefor; and specially designed components therefore and "specially designed software" for the use of these equipment or systems.

(See also Part 379 for additional controls on technology.)

Controls for ECCN 1557A

Unit: Report switching equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QS1VWXYZ.

GLV $ Value Limit: $1,000 for all destinations.

Processing Code: MT

Reason for Control: National security; foreign policy; nuclear non-proliferation.

Special Licenses Available: Commodities controlled by ECCN 1557A are subject to the same special licensing restrictions as those commodities controlled by ECCN 1565A.

Special South Africa and Namibia Controls: Foreign policy export controls for ECCN 1557A apply only to software related to computer equipment destined for the Department of Cooperation and Development, the Department of Physical Infrastructure, the Department of Community Development, the Department of Justice, the Department of Manpower Utilization, and administrative bodies of the "Homelands" that carry out similar functions in the Republic of South Africa and Namibia. Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of software related to computers that would not be used to enforce the South African policy of apartheid.

Technical Notes:

1. Stored program controlled communication switching equipment or systems are categorized as follows:
(a) Communication equipment or systems for "data (message) switching";
(b) "Data (message) switching".

The technique, including but not limited to store-and-forward or packet switching, for:
(a) Accepting data groups (e.g., messages, packets, or other digital or telegraphic information groups transmitted as a composite whole);
(b) Storing (buffering) data groups as necessary;
(c) Processing part of all of the data groups, as necessary, for the purpose of:
(1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling); and
(2) Transmission; or
(3) Multiplexing; and
(4) Retransmitting (processed) data groups when transmission or receiving facilities are available.

"Local area network"—
A data communication system that:
(a) Allows an arbitrary number of independent "data devices" to communicate directly with each other; and
(b) Is confined to a geographical area of moderate size (e.g., office building, plant, campus, warehouse).

"Wide area network"—
A data communication system that:
(a) Allows an arbitrary number of independent "data devices" to communicate with each other;
(b) May include "local area networks"; and

...
(c) Is designed to interconnect geographically dispersed facilities.

(b) Communication equipment or systems for “stored program controlled circuit switching”

“Stored program controlled circuit switching”

The technique for establishing, on demand and until released, a direct (space division switching) or logical (time division switching) connection between circuits based on switching control information derived from any source or circuit and processed according to the stored program by one or more electronic computers.

2. Electronic computers “embedded” in stored program controlled communication switching equipment or systems are to be regarded as specially designed components therefor.

3. This ECCN 1567 includes statistical multiplexers, with digital input and digital output, referred to ECCN 1567 by ECCN 1519(c) if they satisfy the definitions of either “data (message) switching” or “stored program controlled circuit switching”. Note: See ECCN 1519(c) for statistical multiplexers that provide only fixed routing, i.e., routing that is neither:

(a) Determined when the circuit is established; nor

(b) Dynamically alterable.

(For a complete list of definitions of terms used in this ECCN, see Advisory Note 8 below; see also ECCN 1553 for additional definitions relating to electronic computers and ECCN 1568 for additional definitions relating to “software”.)

List of Stored Program Controlled Communication Switching Equipment or Systems, and Specially Designed Components Therefor and “Specially Designed Software” for the Use of these Equipment or Systems Controlled by ECCN 1567A:

(a) Communication equipment or systems for “data (message) switching”, including those for “local area network” or for “wide area network”;

(b) Communication equipment or systems for “stored program controlled circuit switching”;

except:

(Equipment described in sub-paragraphs (1), (2) and (3) below is not controlled by this ECCN 1567A, but it may be controlled by ECCN 1555A.)

(i) Key telephone systems that:

(ii) Are not designed to be upgraded to “private automatic branch exchanges (PABXs)”;

(iii) The “software” supplies:

(A) Is limited to:

1. The minimum “specially designed software” necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

2. Machine executable form; and

(B) Does not include “software”;

1. Controlled by ECCNs 1527 or 1568(a)(5) or by Category XI of Part 121 of the International Traffic in Arms Regulations; or

2. To permit user modification of generic “software” or its associated documentation; and

(iv) If the equipment or systems are not designed for installation by the user without support from the supplier, then the “software” necessary for commissioning is:

1. Exported on a temporary basis only; and

2. Kept under the control of the supplier;

(2) “Stored program controlled telegraph circuit switching” equipment or systems that:

1. Are designed for civil end-users and

2. Provide only the services as

A) As defined in CCITT Recommendation F.69 to 79 (Volume II—Facsimile IL, VII Plenary Assembly, 10–21 November 1980), i.e., the telegraph service whereby subscribers, as defined in CCITT Recommendation X.1 classes 1 and 2, can communicate directly and temporarily between themselves using start-stop telegraph equipment operating:

(A) At 300 baud or less; and

(B) With the international telegraph alphabets No. 2 or 5;

2. A) Machine non-executable form; and

3. Does not include “software”;

1. Controlled by ECCNs 1527 or 1568(a)(5) or by Category XI of Part 121 of the International Traffic in Arms Regulations; or

2. To permit user modification of generic “software” or its associated documentation; and

(iv) If the equipment or systems are not designed for installation by the user without support from the supplier, then the “software” necessary for commissioning is:

1. Exported on a temporary basis only; and

2. Kept under the control of the supplier;

Advisory Note 1: Reserved.

Advisory Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, V, Y and the People’s Republic of China (PRC) of spare parts for exported stored program
controlled communication switching
equipment or systems, provided that:

(a) The parts are:
   (1) Specially designed components
       controlled by this ECCN; or
   (2) Equipment or components
       controlled by other ECCNs on the
       Commodity Control List;

(b) The parts:
   (1) Are designed for controlled
       equipment authorized for export under
       an Advisory Note or for equipment free
       from control;
   (2) Are shipped in the minimum
       quantities necessary for the types and
       quantities of exported equipment being
       serviced; and

(c) Do not upgrade the performance of
    the exported equipment beyond the level:
    (i) Specified in the relevant Advisory
        Note; or
    (ii) Specified as free from control;
    (c) If the parts are "advanced
technology parts" and not eligible for
       export under an Advisory Note to
       another ECCN, the Western supplier's
       service organization must:
       (1) Replace the parts on a one-for-one
           exchange basis;
       (2) Take measures to obtain custody
           of the defective parts; and
       (3) If custody is not obtained, destroy
           the defective parts.

Technical Note:
For the purpose of this paragraph,
"advanced technology parts" are either:
(a) Parts controlled by ECCN
    1564(c)(2);
(b) Microprocessor, microcomputer,
    memory, programmed logic array or
    arithmetic logic unit microcircuits
    controlled by ECCN 1564(d);
(c) Magnetic tape heads, magnetic
    disk heads, magnetic drum heads, or
    non-exchangeable magnetic disk or
    drum recording media, controlled by
    ECCN 1572; or
(d) Acoustic wave devices controlled
    by ECCN 1556, other than those
    exportable under the Advisory Note to
    ECCN 1568.

Advisory Note 3: Licenses are likely to
be approved for export to satisfactory
end-users in Country Groups QWY and
the People's Republic of China (PRC) of
"data (message) switching" equipment
or systems controlled by sub-paragraph
(a), provided that:
(a) The equipment or systems are
    designed to meet the requirements of
    either:
    (1) CCITT Recommendations F.1 to 79
        for store-and-forward systems (Volume
        II–Fascicle IL4, VIIth plenary assembly,
        10–21 November 1980); or
    (2) ICAO Recommendations for store-
        and-forward civil aviation
communication networks (Annex 10 to
the Convention on International Civil
Aviation, including all amendments
agreed up to and including 24 December
1981);
(b) The equipment or systems:
    (1) Are designed and used for fixed
civil "data (message) switching"
applications;
    (2) Will be used primarily for the
specified civil application; and
    (3) Will be operated in the importing
country by:
       (i) The Post, Telegraph and Telephone
           Authority in order to provide public
           "data (message) switching" services for:
           (a) Domestic civil; or
           (b) For international civil use with
               Western countries;
       (ii) A central authority that is a member
           of an intergovernmental organization
           including Western countries (e.g., ITU or
           ICAO) in order to provide an extension of
           international "data (message) switching"
services into the importing
country to fulfill a commitment to the
         intergovernmental organization; or
       (iii) A central public service
           organization, in order to provide "data
           (message) switching" services in a
densely populated, commercial area for:
           (A) Private domestic civil use; or
           (B) For private international civil use
               with Western countries;
       (c) The number, type and
            characteristics of such equipment or
            systems are normal for the approved
            application;
    (d) Such equipment or systems will be
        limited as follows:
        (1) Suitable combinations of circuits
            that do not exceed:
            (i) 250 circuits with "data signalling
                rates" not exceeding 150 bit per second;
            (ii) 60 circuits with "data signalling
                rates" of more than 150 but not
                exceeding 1,000 bit per second; or
            (iii) 16 circuits with "data signalling-
                rates" of more than 1,000 but not
                exceeding 4,800 bit per second;
        (2) The maximum "data signalling
            rate" of any circuit does not exceed
            4,800 bit per second;
        (3) The sum of the individual "data
            signalling rates" of all circuits does not
            exceed 27,000 bit per second;
        (4) The sum of the individual "data
            signalling rates" of all circuits with a
            "data signalling rate" of more than 1,200
            bit per second does not exceed 19,200
            bit per second;
    (e) The equipment or systems do not
        contain "digital computers" or "related
        equipment" controlled by:
        (1) ECCN 1565(h)(1)(A) to (J), or (L)
            or (M); or
        (2) ECCN 1565(h)(1)(ii);
        (f) The "software" supplied:
            (1) Is limited to:
                (i) The minimum "specially designed
                    software" necessary for the use (i.e.,
                    installation, operation and maintenance)
                    of the equipment or systems; and
                (ii) Machine executable form; and
        (2) Does not include "software";
    (i) Controlled by ECCNs 1527 or
        1566(a)(5) (or by Category XI or Part 121
        of the International Traffic in Arms
        Regulations); or
    (ii) To permit user modification of
generic "software" or its associated
documentation;
    (g) If the equipment or systems are not
        designated for installation by the user
        without support from the supplier, then
        the "software" necessary for
        commissioning is
        (1) Exported on a temporary basis
            only; and
        (2) Kept under the control of the
            supplier; and
    (h) Reserved;
    (i) Reserved;
    (j) A statement is provided identifying
        the following:
        (1) The equipment or system to be
            provided; and
        (2) The intended application and
            traffic load; and
    (k) All end-users and their activities.

Advisory Note 4: Licenses are likely to
be approved for export to satisfactory
end-users in Country Groups QWY and
the People's Republic of China (PRC) of
"stored program controlled telephone
circuit switching" equipment or systems
controlled by sub-paragraph (b),
provided that:
(a) The equipment or systems are
designed for fixed civil use as "space
division digital exchanges" or "time
division digital exchanges" that fulfill
the definition of "private automatic
branch exchanges (PABX)";
(b) The equipment or systems:
    (1) Are designed and used for fixed
civil "stored program controlled
telephone circuit switching" applications; and
    (2) Will be operated in the importing
country by civil end-user who has
furnished to the supplier a signed
statement certifying that the equipment
or systems will be used for the specified
end-use at a specified location only;
(c) The number, type and
    characteristics of such equipment or
    systems are normal for the approved
    application;
(d) The equipment or systems do not
    contain "digital computers" or "related
    equipment" controlled by:
    (1) ECCN 1565(h)(1)(A) to (K) or (M);
    (2) ECCN 1565(h)(1)(s)
(3) ECCN 1565[h][1](ii);
(e) The PBXs do not have the following features:
(1) Multi-level call preemption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;
(2) "Common channel signalling";
(3) Automatic tandem "trunk circuit" switching, including adaptive routing, or algorithms that would permit a search for "trunk circuit" connection paths within a network;
(4) Interconnection to multi-RF channel radio equipment that allows the PBX to operate in a mobile telephone system;
(5) Digital "trunk circuit" or subscriber line interfaces;
(6) Digital synchronization circuitry for networking two or more exchanges;
(7) Those that permit the implementation of switching functions at remote equipment; or
(8) Centralized maintenance, including the transmission or reception of instructions for the purpose of:
(i) Controlling traffic;
(ii) Directionalizing paths;
(iii) Altering routing tables;
(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or
(v) Managing the switch or network;
Except:
The routing of simple alarms announcing equipment malfunctions;
(f) "Communication channels" or "terminal devices" used for administrative and control purposes:
(1) Are fully dedicated to these purposes; and
(2) Do not exceed a "total data signalling rate" of 6,600 bit per second;
(g) Voice channels are limited to 3,100 Hz as defined in CCITT Recommendation G.151;
(h) The PBXs do not have "trunk circuit"-to-subscriber line ratios that exceed:
(1) 35% for PBXs with fewer than 100 subscriber lines; or
(2) 20% for PBXs with 100 or more subscriber lines;
(i) Reserved;
(j) The "software" supplied:
(1) Is limited to:
(i) The minimum "specially designed software" necessary to the use (i.e., installation, operation and maintenance) of the equipment or systems; and
(ii) Machine executable form; and
(2) Does not include "software";
(k) Controlled by ECCNs 1527 or 1566[a][5] or by Category XI of Part 121 of the International Traffic in Arms Regulations; or
(l) To permit user modification of generic "software" or its associated documentation;
If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:
(1) Exported on a temporary basis only; and
(2) Kept under the control of the supplier;
(1) Reserved;
(m) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment or systems, provided:
(1) The equipment or systems are designed for fixed civil use of "stored program controlled telegraph circuit switching" data; and
(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;
(c) The number and characteristics of such equipment or systems are normal for the approved application;
(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:
(1) ECCN 1565[f];
(2) ECCN 1565[h][1](i) (A) to (K) or (M); or
(3) ECCN 1565[h][1](ii);
(e) The equipment or systems do not have the following features:
(1) Multi-level call preemption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches; or
(2) "Common channel signalling";
(f) The maximum internal bit rate per channel does not exceed 9,600 bit per second;
(g) The telegraph circuits, which may be telephone circuits, may carry any type of telegraph or telex signal compatible with a voice channel bandwidth of 3,100 Hz as defined in CCITT Recommendation G.151;
(h) The "software" supplied:
(1) Is limited to:
(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and
(ii) Machine executable form; and
(2) Does not include "software".
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
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(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
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(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
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(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Group QVY and the People's Republic of China (PRC) of "stored program controlled circuit switching" equipment of systems, controlled by sub-paragraph (b), provided that:
(1) A statement is provided identifying the following:
(1) The equipment or system to be provided; and
(2) The intended application and traffic load; and
(3) All end-users and their activities.
(d) The number, type and characteristics of such equipment or systems are normal for the approved application;

(e) When exported, the equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565(f)(1) to (4), (g), or (h)(1)(i)(A) and (B);

(f) The equipment or systems do not exceed any of the following limits:
   (1) A termination capacity of either:
       (i) 50,000 subscriber lines; or
       (ii) 13,000 "trunk circuits";
   (2) Designed or modified for a maximum capacity of 225,000 busy hour call attempts; or
   (3) Designed or modified for switched traffic limited to 5,000 erlang;

(g) The equipment or systems do not have the following features:
   (1) Multi-level call preemption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;
   (2) "Common channel signalling";
   (3) Adaptive routing, or algorithms that would permit a search for "trunk circuit" connection paths within a network;
   (4) Interconnection to multi-RF channel radio equipment that allows the exchange to operate in a mobile telephone;
   (5) Digital subscriber line interfaces;
   (6) Digital synchronization circuitry for networking two or more exchanges; or
   (7) Centralized maintenance, including the transmission or reception of instructions for the purposes of:
       (i) Controlling traffic;
       (ii) Directionalizing paths;
       (iii) Altering routing tables;
       (iv) Connecting or disconnecting subscriber circuits or "trunk circuits";
       (v) Managing the switch or network;

Except:
   The routing of simple alarms announcing equipment malfunctions;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes;

(i) Are fully dedicated to these purposes; and
(ii) Do not exceed a "total data signalling rate" of 9,600 bit per second;

(g) Voice channels are limited to 3,100 Hz as defined in CCITT Recommendation G.151;

(h) The "software" supplied:
   (1) Is limited to:
       (i) Directing and designating paths;
       (ii) Managing the switch or network;
       (iii) Controlling traffic;
       (iv) Directionalizing paths;

(i) Machines executable form;

(2) The intended application and traffic load; and

(iii) Does not include "software"-

(3) Adaptive routing, or algorithms permitting a search for "trunk circuit" connection paths within a network;

(iv) Interconnection to multi-RF channel radio equipment that allows the exchange to operate in a mobile telephone;

(v) Digital subscriber line interfaces;

(vi) Digital synchronization circuitry for networking two or more exchanges; or

(vii) Centralized maintenance, including the transmission or reception of instructions for purposes of:

   (i) Controlling traffic;
   (ii) Directionalizing paths;
   (iii) Altering routing tables;
   (iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

Advisory Note: The following are definitions of terms used in this ECCN 1567:

(i) "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine executable form; and

(iii) "software" necessary for the use of the equipment or systems;

(iv) "software" necessary for the use of the equipment or systems;

(v) "software" necessary for the use of the equipment or systems;

(vi) "software" necessary for the use of the equipment or systems;

(vii) "software" necessary for the use of the equipment or systems;

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(xxxvii) "software" necessary for the use of the equipment or systems;

(xxxviii) "software" necessary for the use of the equipment or systems;

(xxxix) "software" necessary for the use of the equipment or systems;

(0) "software" necessary for the use of the equipment or systems;
“Common channel signalling” — A signalling method in which a single channel between exchanges conveys, by means of labelled messages, signalling information relating to a multiplicity of circuits or calls and other information such as that used for network management.

“Communication channel” — The transmission path or circuit including the terminating transmission and receiving equipment (modems) for transferring digital information between distant locations.

“Data device” — Equipment capable of transmitting or receiving sequences of digital information.

“Data (message) switching” — The technique, including but not limited to store-and-forward or packet switching, for:

(a) Accepting data groups (including messages, packets, or other digital or telegraphic information groups that are transmitted as a composite whole);
(b) Storing (buffering) data groups as necessary;
(c) Processing part or all of the data groups, as necessary, for the purpose of: (1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling); (2) Multiplexing; or (3) Reformatting (buffering) data groups when transmission or receiving facilities are available.

“Data signalling rate” — The rate as defined in ITU Recommendation 53-36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Binary digits for coding, checking, and synchronization functions are included.

Note. It is maximum one-way rate, i.e., the maximum rate in either transmission or reception.

“Digital computer” — Equipment that can, in the form of one or more discrete variables:
(a) Accept data;
(b) Store data or instructions in fixed or alterable (writable) storage devices;
(c) Process data by means of a stored sequence of instructions that is modifiable; and
(d) Provide output of data.

Note: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

“Embedded” in equipment or systems — Can feasibly be neither:
(a) Removed from such equipment or systems; nor
(b) Used for other purposes.

“Local area network” — A data communication system that:
(a) Allows an arbitrary number of independent “data devices” to communicate directly with each other; and
(b) Is confined to a geographic area of moderate size (e.g., office building, plant, campus, warehouse).

“Private automatic branch exchange (PABX)” — An automatic telephone exchange, typically incorporating a position for an attendant, designed to provide access to the public network and serving extensions in an institution such as a business, government, public service or similar organization.

“Software” — A collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression.

“Space division analog exchange” — A “space division exchange”, using an analog (including sampled analog) signal within the switching matrix. Such exchanges can route digital signals, subject to the bandwidth limitations of the equipment. Thus, such exchanges in public networks commonly pass digital data at rates of several kilobit per second per voice channel of 3,100 Hz as defined in CCITT Recommendation G.351.

Note: A “space division analog exchange” with a wideband switching matrix can be converted to a “space division digital exchange” by modifying some or all of the input interface circuitry.

“Space division digital exchange” —
(a) Based solely on a subscriber-type of telephone signalling information, derived from the calling circuit and
(b) Processed according to the stored programs by one or more electronic computers.

The telephone circuits may carry any type of signal, e.g., telephone or telex, compatible with a voice channel bandwidth of 3,100 Hz or less.

“Terminal device” — A “data device” that:
(a) Does not include process control sensors and actuating devices; and
(b) Is capable of:
(1) Accepting or producing a physical record;
(2) Accepting a manual input; or
(3) Producing a visual output.

Note: Normal groupings of such equipment (e.g., a combination of paper tape punch/reader and printer), connected to a single data channel or “communication channel”, shall be considered as a single “terminal device”.

“Terminal exchange” —
(a) A local exchange used for terminating subscribers’ lines;
(b) A remote switching unit that performs some functions of a local exchange and operates under a measure of control from the parent exchange; (c) A local exchange, typically 2-wire, used as a switching point for traffic between subordinate local exchanges, which may also provide 4-wire connections to and from the national long-distance network; or (d) An exchange that performs any combination of functions in (a), (b) or (c) above.

"Time division analog exchange" —
A "time division exchange" in which the parameter, data associated with an individual segment of a stream of data or voice signals, varies continuously.

"Time division digital exchange" —
A "time division exchange" in which the parameter, associated with an individual segment of a stream of data or voice signals, is of a finite number of digitally coded values.

"Time division exchange" —
An exchange in which segments of different streams of data or voice signals are interleaved in time and routed through the switching matrix along a common physical path.

The matrix may also include one or more stages of space division switching.

The signal being routed through the matrix can be analog (e.g., pulse modulation or data) or digital (e.g., pulse code modulation, delta modulation or data).

"Total data signalling rate" —
The sum of the individual "data signalling rates" of all "communication channels" that: (a) Have been provided with the system; and (b) Can be sustained simultaneously assuming the configuration of the equipment that would maximize this sum of rates.

"Transit exchange" —
(a) An exchange, typically 4-wire, used as a switching point for traffic between other exchanges in the national network (historically known as a trunk exchange); (b) A 4-wire exchange serving outgoing, incoming or transit international calls; or (c) An exchange that performs any combination of functions in (a) or (b) above or those of a "terminal exchange".

"Trunk circuit" —
A circuit with associated equipments terminating in two exchanges.

"Wide area network" —
A data communication system that: (a) Allows an arbitrary number of independent "data devices" to communicate with each other; (b) May include "local area networks"; and (c) Is designed to interconnect geographically dispersed facilities.

Supplement 1 to § 399.1 [Amended] 7 In Supplement No. 1 to § 399.1 (the "Commodity Control List"); Commodity Group 5, Electronics and Precision Instruments, ECCN 4529B is removed.

Supplement 1 to § 399.2 [Amended] 8. In Supplement No. 1 to § 399.2, "Commodity Interpretations; Interpretation 8 is removed and reserved.


John K. Bondock,
Director, Office of Export Administration,
International Trade Administration.
[FR Doc. 84-33718 Filed 12-28-84; 8:45 am]
BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION
16 CFR Part 14

Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements

AGENCY: Federal Trade Commission.
ACTION: Final rule; Publication of enforcement protocol for Franchise Rule.

SUMMARY: The enforcement protocol articulates some of the factors which the Commission considers in determining whether or not to initiate enforcement proceedings for non-compliance with the Franchise Rule. These factors include the nature of the alleged violation, the degree of injury, the proposed remedies and the appropriateness of naming as additional defendants individuals who direct, formulate and control company policies.

DATE: The Franchise Rule enforcement protocol is effective December 21, 1984.


List of Subjects in 16 CFR Part 14
Franchises, Business opportunity ventures, Trade practices.

SUPPLEMENTARY INFORMATION: The FTC's Franchise Rule is formally titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures", 10 CFR Part 436. The Commission has determined that it is in the public interest to publish, in the form of an enforcement policy statement, some of the factors which the Commission considers in determining whether or not to initiate an enforcement proceeding for non-compliance with the Franchise Rule.

PART 14—[AMENDED]

Accordingly, Title 16 of the Code of Federal Regulations is amended by the addition of new § 14.17.

§ 14.17 Franchise Rule Enforcement Protocol

The Commission believes that the following questions are relevant in deciding when to initiate an enforcement action under the Franchise Rule. The Commission does not intend to suggest that it must possess answers to each of the questions before initiating any action. In some cases, answering certain questions may involve undue costs. Moreover, the answers to even a few questions may positively indicate that a proposed action is in the public interest so that the Commission need not consider other questions. The protocol is a framework for analysis, not a rigid imperative.

(a) Coverage Under the Rule. (1) Is the proposed defendant covered by the Rule? Analyze the relationship between the proposed defendant and its distributors in the context of the rule's definitional prerequisites to coverage.

(2) To what extent will proof of coverage be based on the proposed defendant's own writings, such as its contract or promotional materials, as opposed to witnesses' testimony about salespersons' promises?

(3) Is it likely that the proposed defendant will challenge coverage? If so, will such challenge be based on a question of interpretation or a question of facts; that is, is the dispute over whether a given fact situation constitutes a franchise or what the facts are?

(4) If Rule coverage is uncertain, would a Section 5 action be more appropriate?

(b) Compliance With the Rule. (1) Was the basic disclosure document provided to prospective franchisees? Were all required disclosures made completely and accurately?

(2) Was timely disclosure made?

(3) Did the franchisors have at least 10 business days to review the disclosures?

(4) Were earnings claims made? If so, was an earnings claims disclosure document provided? Does there appear
to be substantiation for any claims made?
(5) Were there any other rule violations present?
(c) Consumer Injury. (1) How many franchises were sold in violation of the rule?
(2) What is the aggregate dollar amount of revenue received by the franchisor from franchise sales in violation of the rule, and the franchisor’s current net worth?
(3) What is the current or expected rate of franchise sales?
(4) How much have franchisees lost?
To what extent has their behavior after purchase contributed to or mitigated their losses? Conversely, to what extent has their franchisor’s behavior contributed to or mitigated their losses?
(5) What percentage of the franchisor’s franchisees have experienced economic loss from their investments? Can this loss be attributed, in whole or in part, to rule violations?
(d) Remedies. (1) Analyze the efficiency of injunctions, civil penalties and consumer redress.
(2) Discuss the need for proposed preliminary relief, such as an asset freeze and preliminary injunction.
(3) Who are the key persons who formulate, direct and control the company policies which should be individually named in the complaint?
(4) What is the financial condition of each proposed defendant? What can we reasonably anticipate collecting in civil penalties or redress from corporate and individual defendants?
(5) If consumer redress is recommended, what is the estimated loss and how is it calculated?
(6) How viable or likely is non-Commission enforcement, such as private actions or state or local prosecution, as an alternative to Commission action?
(7) To what extent would each type of violation identified have been likely to influence decisions by potential franchisees?
(e) Other Conditions. (1) What resources are needed to bring the action to an acceptable conclusion?
(2) Will the action deter other potential violators from failing to comply with the Rule?
(3) Will the action deter other potential violators from failing to comply with the Rule?
By direction of the Commission.
Emily H. Eck,
Secretary.
[FR Doc. 84–39998 Filed 12–28–84; 8:45 am]
BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION
16 CFR Part 1000
Commission Organization and Functions
AGENCY: Consumer Product Safety Commission.
ACTION: Final rule.

SUMMARY: The Commission is publishing revisions to its statement of organization and functions to reflect organizational changes made since the changes published December 31, 1981, 46 FR 63244. These include creation of a Directorate for Field Operations and relocation of the Commission’s human factors personnel.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, D.C. 20207


SUPPLEMENTAL INFORMATION: The Commission is revising its statement of organization and functions, 16 CFR Part 1000, to include organizational changes since the part was last substantively revised on December 31, 1981, 46 FR 63244. The organizational changes are summarized below:
1. A Directorate for Field Operations was created and assumed responsibility for supervision of the Commission’s Regional Offices.
2. The Commission’s functions and staff relating to human factors analysis were transferred from the Directorate for Epidemiology to the Directorate for Engineering Sciences.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553, the Commission finds that notice and other public procedures with respect to this rule are impractical and contrary to the public interest, and good cause is found for making this rule effective immediately upon publication in the Federal Register. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of that Act.
List of Subjects in 16 CFR Part 1000
Organization and function (government agencies).
and other physical sciences and the conduct and relevant evaluation of specific product testing to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products and provides scientific and technical expertise to the Commission. It conducts and evaluates engineering tests and test methods, participates in the development of product safety standards, and provides advice on proposed mandatory standards and industry voluntary standards efforts. It performs or monitors research in the engineering sciences, including the translation of human factors and engineering factors, provides supervision to the Commission’s engineering laboratory and engineering test facility and provides analytical services in support of the Commission’s enforcement activities. The Directorate for Engineering Science conducts studies of the safety of consumer products. It coordinates engineering research testing and evaluation activities with the National Bureau of Standards and other Federal agencies, private industry and consumer interest groups. The Directorate gives statistical support for the engineering aspects of standards development, certification programs and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities, including tests and analyses conducted in the field. The Directorate provides engineering technical support to all Commission organizations and programs. The Directorate also provides human factors analyses and evaluations, which involve studying the capabilities and limitations of the human, the design characteristics of the product and the environmental conditions and how they relate to injury causation ("man-machine interface"). It develops accident scenarios from the data to identify injury patterns attributed to human factors. Criteria are developed to determine which products are hazardous and the severity and likelihood of injury. Solutions are recommended to reduce the hazards identified. This information is applied to develop standards and corrective action plans. The Directorate provides appropriate analytical representation to the Office of Program Management.

5. A new section 1000.31 is added to read as follows:

§ 1000.31 Director for Field Operations.

(a) The Associate Executive Director for Field Operations executes direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. This office provides direction and leadership to the Regional Offices. Directors and promulgate policies and operational guidelines which form the framework for management of Commission field operations. This office works closely with the other Headquarters functional units and the Regional offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarters’ offices and Regional offices. The office is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional offices are responsible for carrying out investigative and compliance activities within their areas. They encourage industry compliance with the laws and regulations administered by the Commission through information and education programs. They also provide support and maintain liaison with components of the Commission, other Regional Offices, and appropriate Federal, State, and local government offices.


Sadie E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 84-33588 Filed 12-28-84; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM83-71-035 through RM83-71-038]

Elimination of Variable Costs From Certain Natural Gas Pipelines; Minimum Commodity Bill Provisions


AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and motion for stay of Order No. 380-C.

SUMMARY: By this order, the Commission denies four requests for rehearing of Order No. 380-C. The Commission only addresses the objections raised by the petitioners which have not already been addressed by the Commission in Order No. 380-C. In addition, by this order, the Commission denies a motion for stay of Order No. 380-C.

In Order No. 380-C, the Commission, after further comments by the parties, reaffirmed its decision to apply the minimum commodity bill to minimum take provisions. The Commission declined to grant Arkansas-Louisiana Gas Company and Pacific Gas Transmission Company a waiver and, in response to Colorado Interstate Gas Company’s request for clarification, directed MIGC, Inc. to file an Interim Agreement, dated December 20, 1983, as part of its FERC Gas Tariff.

DATE: This order was issued on December 21, 1984.


SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O’Connor, Chairman; Georgiana Sheldon, A.G. Saia, Oliver G. Richard III and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) has received four requests for rehearing and a motion for stay of Order No. 380-C.

This order denies all four requests for rehearing and MIGC, Inc.’s (MIGC) request for stay of Order No. 380-C.

II. Background

On October 24, 1984, the Commission issued Order No. 380-C which reaffirmed the application of the minimum bill rule to minimum take provisions in pipeline rate schedule or tariffs, denied requests for waiver filed by Arkansas-Louisiana Gas Company (Arkla) and Pacific Gas Transmission Company and directed MIGC, Inc. (MIGC) to file an Interim Agreement, dated December 20, 1983, as part of its FERC Gas Tariff. On November 23, 1984, requests for rehearing were filed by

1 The requests for rehearing were filed by: (1) Transwestern Pipeline Company; (2) Arkansas-Louisiana Gas Company; (3) Algonquin Gas Transmission Company; and (4) MIGC, Inc.

2 The motion for stay of Order No. 380-C was filed by MIGC, Inc.

After giving each objection full procedural objections regarding the continued use of minimum take provisions are not well-founded. The Commission has considered the factual circumstances distinguish them from the norm, they may file for a waiver of the regulations. As we stated in Order No. 360, generic action on the subject is in the public interest and the Commission has adequate authority to act under section 5 of the Natural Gas Act by means of rulemaking. (See Order No. 360 at 45-49.

B. Other Objections Raised

Several petitioners on rehearing raise issue with the rule as it applies in certain instances. MMGC and Arkla on rehearing argue against application of the rule in certain factual circumstances related only to their systems. They do not make clear whether these situations reflect those of other natural gas pipelines. The Commission's Order No. 380-C was based on a thorough examination of the circumstances of many pipelines, including the petitioners. As discussed below and in Order No. 380-C, none of these arguments raised on rehearing dissuade the Commission from its finding that the rule, as promulgated, is reasonable and should apply to minimum take provisions in all pipeline rate schedules or tariffs.

1. MMGC, Inc.

All of the arguments raised on rehearing by MMGC address the application of the rule to the specific facts on its system. MMGC's arguments could have been better framed in terms of a request for waiver of the rule as applied to the Interim Agreement, but the Commission does not consider that MMGC has yet requested such a waiver. For purposes of expedition, the Commission will discuss the specific facts raised by MMGC here.

MMGC asserts that: (1) The Commission's findings that eliminating minimum take provisions will allow purchasers to reduce costs by following a least-cost purchasing strategy are unfounded as demonstrated in MMGC's case; (2) the Commission failed to consider MMGC's situation and, as applied to MMGC, its analysis and assumptions are invalid; and (3) the Commission erred in ordering MMGC to file the Interim Agreement. (at 6-20). The Commission has considered the factual circumstances on MMGC's system and has concluded that as applied to MMGC, the Commission's analyses and assumptions are valid.

In support of its contention that the Commission's findings are unfounded, MMGC states that following the issuance of Order No. 380-C, "MMGC has confirmed that it has not and will not follow a least-cost purchasing strategy." (at 6) MMGC states that this is borne out by the fact that following the issuance of Order No. 380-C, CIG informed MMGC that it was reducing its takes from MMGC by 20 percent, regardless of the fact that "[a] significant portion of the gas CIG is currently purchasing is more expensive than MMGC's gas... ." (at 9) In Order No. 380-C, the Commission did not state that purchasers would pursue a least-cost purchasing strategy, but that the elimination of minimum take provisions would enable pipelines to pursue a least-cost purchasing strategy. To the extent a jurisdictional pipeline's gas costs do not reflect prudent purchasing practices or it unjustly or unreasonably favors affiliated companies, a remedy is available.

MMGC also argues that the Commission failed to consider situations such as exist on MMGC's system and, therefore, the Commission's analysis and assumptions are invalid. (at 12-17) MMGC again relies on the fact that nearly all of its supply is made up of casinghead and processing plant gas and the application of this rule will render MMGC unable to sell the amount of gas necessary to maintain production levels. (at 13-16) MMGC is also concerned that if it is unable to guarantee its suppliers/ producers a market for this gas, they will no longer continue to provide MMGC with a reliable source of gas supply. The Commission is not persuaded by these arguments. MMGC has not demonstrated that the application of this rule will cause MMGC's suppliers/producers operational problems resulting from reduced takes. As we have repeatedly stated, if operational problems result from reduced takes, producers will be more inclined to reduce prices in order to market the gas. The rule is intended to encourage producers' to reduce prices to market clearing levels. With respect to MMGC's contention that it will no longer be guaranteed a reliable source of gas supply, it is very unlikely that MMGC's producers suppliers will turn away a buyer willing to take its casinghead and processing plant gas.

Finally, MMGC contends that the Commission erred in ordering MMGC to file the December 20, 1983 Interim Agreement. (at 20) In support of this contention, MMGC states that the Interim Agreement has no effect on the rate CIG must pay for MMGC's gas CIG is the only purchaser under MMGC's Rate Schedule PL-1; therefore, there is no lack of certainty on CIG's part to the rule in effect for MMGC's gas. (at 20-22) MMGC also states that regardless of whether...
the Interim Agreement should be on file with the Commission, the Commission had no basis to extend its minimum bill rule to modify the Interim Agreement because the Commission made no attempt to consider the unique circumstances surrounding the MIGC/CIG Agreement, and failed to consider the effects of applying the rule to the Interim Agreement. (at 22)

The Commission has not erred in ordering MIGC to file the Interim Agreement because "all contracts which in any manner affect or relate to such rates, charges, classifications, and services" are to be filed with the Commission in accordance with section 6(c) of the Natural Gas Act. *It is clear that the terms and conditions of service as set forth in the Interim Agreement affect or relate to the rates, charges or services rendered by MIGC.

Contrary to MIGC's assertions, the Commission has considered the circumstances surrounding the execution of the Interim Agreement and the effects of applying the rule to that Agreement. The Commission finds, however, that these facts do not demonstrate that the rule as applied to MIGC is invalid. Accordingly, MIGC's request for rehearing is denied.

2. Arkansas-Louisiana Gas Company

Arkla asserts that the Commission's refusal to grant it a waiver of the minimum bill rule was arbitrary and capricious. In support of its assertion, Arkla states that: (1) The Commission's action encourages the purchase of high-cost gas, thereby insulating high-cost producers from competition and encouraging further discrimination by Northwest Central Pipeline Corporation (Northwest Central); (2) the Commission has ignored the operational and contractual impact of its orders; and (3) the Commission's orders will cause Arkla irreparable harm. The Commission is not persuaded by these arguments.

Arkla contends that the Commission incorrectly assumed that removal of Arkla's minimum take provisions would enhance price competition. According to Arkla, the Commission ignored the relatively low cost of Arkla's gas, as well as what was actually occurring in the marketplace. (at 7) The Commission's order eliminating minimum take provisions to the extent they recover gas costs for gas not taken does not encourage the purchase of high-cost gas. On the contrary, it eliminates certain barriers which inhibited a pipeline from pursuing a least-cost purchasing strategy. What Arkla and other petitioners complain about is not what the rule actually does, but what it fails to do. For instance, Arkla's complaint is not with the fact that the rule will allow purchasers to seek less expensive gas, but rather that its customers, given the option, will not purchase the least expensive gas available because of other contractual obligations. In this proceeding, the Commission was only attempting to remedy the problems caused by the inclusion of minimum take provisions in pipeline rate schedules or tariffs. The Commission did not undertake to resolve all of the problems related to individual pipelines' purchasing practices, but neither has it turned a blind eye to the practices cited by Arkla and the other petitioners. Rather, those matters are more appropriately considered in future proceedings when those pipelines file to adjust their rates to recover the purchased gas costs in question.

Arkla's second and third contentions concern the operational and contractual impact of the Commission's orders on its system. According to Arkla, elimination of its minimum take provisions is subjecting Arkla to wide swings in gas demands which could result in a reduction in deliveries to Arkla's Priority 6 customers. (at 15-16) Arkla further contends that because the Commission's intentions with respect to minimum take provisions was not known until July 1984, there was insufficient time for Arkla to attempt to adjust its operations and obligations to accommodate this substantial altering of the service rendered to Northwest Central. According to Arkla, absent a waiver of the Commission's rule, it will suffer irreparable harm. (at 15-16) The Commission, as discussed in Order No. 380-C, has considered the operational and contractual impact of its orders on Arkla and is not persuaded that subjecting Arkla to the rule will cause Arkla irreparable harm. For these reasons, Arkla's request for rehearing is denied.

3. Algonquin Gas Transmission Company and Transwestern Pipeline Company

Algonquin and Transwestern have raised the same or similar arguments as those addressed above or in Order No. 380-C. For that reason, they will not be repeated here. The requests for rehearing of Algonquin and Transwestern are hereby denied.

The Commission has considered all of the other issues raised on rehearing and concluded that only the issues discussed above merit response. All of the other issues not addressed above have already been fully considered and addressed in the 380 series of orders.

IV Motion for Stay

On December 6, 1984, MIGC filed a motion for stay of Order No. 380-C pending consideration of MIGC's request for rehearing of that order and any subsequent court review.

The key element in the Commission's determination of whether to grant a stay is whether the moving party has demonstrated that it will be irreparably injured in the absence of a stay. *Arkla Gas Transmission System, 17 FERC f 61,235 (1981). Upon review of MIGC's motion, we find that MIGC's assertion of irreparable injury is without merit. *MIGC has not shown good cause warranting a stay of Order No. 380-C. We will therefore deny MIGC's motion.

V Clarification

Several questions have arisen concerning the scope of the rule with respect to the recovery of fixed costs associated with minimum take provisions. In Order No. 380-C, memo at 7, the Commission incorrectly stated that the pipeline is free to seek recovery of such costs in a general section 4 rate filing. Minimum take provisions remain currently effective except to the extent that they operate to recover variable costs for gas not taken by the buyer. The Commission in Order No. 380-C only eliminated the recovery of variable costs under a pipeline's minimum take provision. In other words, minimum take provisions are treated in the same manner as minimum commodity bills. The fixed component included in a selling pipeline's commodity rate may still be recovered by that seller for the number of units of gas specified in the minimum take provision even where the buyer does not take that specified minimum amount. Otherwise, these purchasers would be relieved of the cost responsibility for fixed costs associated with the service as well as responsibility for variable costs of gas not taken. As a result, these purchasers would be better off than purchasers under a minimum commodity bill. The Commission does not intend this to result from the present rule.

The Commission orders:

(A) For the reasons stated in the body of this order, the requests for rehearing filed by MIGC, Arkla, Transwestern, and Algonquin are hereby denied.

*We furthermore are not persuaded by MIGC's assertion that the merits of its appeal are such that it is likely to succeed in the appellate court.
Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act


AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing in part.

SUMMARY: On November 16, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM84-14-000, Order No. 405, 49 FR 40594 (November 29, 1984), amending its regulations to prepare for price deregulation under section 121 of the Natural Gas Policy Act for certain types of gas subject to sections 102, 103, 105, and 106. The Commission received timely petitions for rehearing of the final rule from eighteen petitioners. For the reasons stated below and those set forth in the final rule, this order grants rehearing in part, denies rehearing in part, and denies applications for stay.

II. Background

On January 1, 1985, NGPA section 121 will deregulate the prices for substantial amounts of intrastate and interstate gas. Section 121(a) eliminates price controls from "new natural gas" defined in section 102(g)4 and certain gas produced before April 30, 1977, which amended its regulations to prepare for price deregulation under section 121 of the Natural Gas Policy Act of 1978 (NGPA) for certain types of gas subject to NGPA sections 102, 103, 105, and 106. The Commission received timely applications for rehearing of the final rule from eighteen petitioners. For the reasons stated below and those set forth in the final rule, this order grants rehearing in part, denies rehearing in part, and denies applications for stay.

III. Disposition of Applications for Rehearing

A. Dual Qualification Gas

In the final rule on deregulation of certain NGPA gas categories, the Commission stated that gas which qualifies for a regulated and a deregulated category will be deregulated. The Commission stated that gas which qualifies for both a regulated and a deregulated category will be deregulated.

Fourteen petitioners requested rehearing on this issue, stating that the document on dually qualified gas in the final rule did not accurately mirror Congressional intent, was unlawful or arbitrary, and would lead to unintended results in the marketplace. These petitioners requested stay of Order No. 405 pending consideration of the rehearing petitions and possible court review. The Commission denies the requests for stay in the public interest. Deregulation will occur on January 1, 1985. Rates for orderly transition are necessary: Order No. 405 promulgates these rates. Therefore, it is not in the public interest to grant a stay of these rates.

"New natural gas" under section 102(c) covers three types of gas: (1) gas produced from the Outer Continental Shelf under a lease entered into on or after April 20, 1977, gas produced from an onshore well on which drilling began on or after February 19, 1977, and which is at least 2.5 miles from the nearest market well or which is 1.00 feet deeper than the deepest completion location of any well within 2.5 miles of the nearest market well, and which includes gas produced from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977, subject to certain exclusions.

IV. Rehearing

Application for Rehearing

The Commission will consider FOGAN's application for reconsideration under section 120(a) of the Federal Energy Regulation Act and section 102(g) of the Natural Gas Policy Act. The Commission will consider FOGAN's application for reconsideration under section 405 of the Federal Energy Regulation Act and section 102(g) of the Natural Gas Policy Act.
The Commission recognizes that Congress had two major objectives in mind when it passed the NGPA in 1978. First, in the short term, it maintained a regulatory structure of price controls and, within that structure, provided incentives to encourage exploration and development of new reserves and, second, in the long term, it gradually substituted market forces for regulated prices by phasing in deregulation in 1985 and 1987. Petitioners believe that the Commission's determination for dealing with dually qualified gas creates a conflict between these two objectives. The Commission disagrees. The deregulation of certain categories of natural gas as provided in the NGPA is not in conflict with the goal of increasing energy supplies. Indeed, deregulation fosters this goal. Without question, phased deregulation was one of the primary methods utilized by Congress to increase energy supplies.

The statute clearly states that price controls for certain section 102(c), qualifying section 103(c) and section 105 gas "shall... cease to apply January 1, 1985." NGPA section 121 mandates deregulation for these categories of gas. The fact that some of this gas also qualifies for another gas category does not alter this Congressional mandate to deregulate. The Commission is well aware that the NGPA does not deregulate section 107(c)(5) gas or section 108 gas; the NGPA does, however, deregulate gas under either of these categories which also qualifies for a category which is deregulated on January 1, 1985. In support of the Commission's position, in the September 25, 1978 Senate floor debate, it was stated that stripper wells are deregulated:

6 See Cong. Rec. S15216 (September 15, 1978), in which Senator Bartlett introduced a letter written by President Jimmy Carter to the Governor of Oklahoma: "The decontrol of producers prices for new natural gas would provide an incentive for new exploration and would help our nation's oil and gas operators attract needed capital. Deregulation of new gas would encourage sales in the interstate market and help lessen the prospect of shortages in the nonproducing states which rely on interstate supplies. While encouraging new production, this proposal will protect the consumer against sudden, sharp increases in the average price of natural gas."

7 Approximately 40% of new tight formation wells will not be deregulated because they are above the 5000 foot depth requirement for section 103 deregulation.


9 Petitioners also state that dually qualified gas was not covered by section 101(b)(5) since such gas was not an "exemption from such" maximum lawful price. These comments argue that "exemption" does not refer to deregulated gas. To bolster this position the comments refer to a statement made by Congressman Dingell in referring to section 101(b)(5) that "this rule is intended to facilitate resolution of which ceiling price may apply if more than one ceiling price rule applies applicable." (emphasis added).

10 Thus, these comments argue that the Dingell statement makes it clear that producer choice exists with regard to two regulated ceiling prices and not to a choice between a regulated and a deregulated price.

The Commission recognizes that there may be some merit to these arguments. However, even if section 101(b)(5) does in fact apply to deregulated gas, the Commission believes that the statutory language compels the gas to be sold at a deregulated price. The language of section 101(b)(5) states that the producer may choose the NGPA category which "could result in the highest price." Without question, a deregulated price could always result in a price higher than a regulated price which is subject to a ceiling price; whether the contract allows the producer to collect a price higher than a regulated price is a contractual issue, not an issue raised by the deregulation scheme of the NGPA.

Therefore, the Commission states that section 121 is self-executing. Price deregulation occurs by operation of law. There is no statutory allowance for the producer or the purchaser to choose whether or not to deregulate gas that qualifies under section 121 for deregulation.

Claims of Reliance

Petitioners claim that they relied to their detriment on the continued availability of the incentive price in section 107(c)(5) and in section 108 by making investments they would not have made had this incentive price been eliminated.


otherwise have made. They allege that the Commission may not arbitrarily limit their ability to collect the incentive price.

Upon enactment by Congress of the NGPA on November 9, 1978, producers were aware that section 121 required deregulation of section 102, qualifying section 103 and section 105 gas. The impending deregulation of these sections should not surprise producers. Initially, the Commission cites the statement by Congressman Dingell who, when discussing the meaning of dual qualification, stated, "A single proceeding to determine qualification for both designations (new natural gas and stripper well gas) would permit the producer to obtain stripper well pricing under section 108 prior to January 1, 1985, and deregulation as new gas thereafter." Thus, producers should have known that certain dually qualified gas would be deregulated by the NGPA on January 1, 1985.

Furthermore, producers recognized that the new tight formation gas incentive price was an interim measure which would be discarded once deregulation occurs, and stated this position as early as 1979 in filed comments on the tight formation rulemaking.14 The Commission stated this position in the preamble to the tight formation rulemaking.14 The Commission believes that producers were in fact aware of the limited time during which incentive prices would be available, if related to categories of gas which will be deregulated.15 Faced now with a different economic climate upon deregulation than previously anticipated, they cannot reasonably assert reliance on the continuation of incentive prices when coupled with categories of gas which will be deregulated.

The Commission noted in the final rule and asserts here that producers had no reason to rely on the continuation of regulated price categories which were linked with categories which will deregulate on January 1, 1985. The Commission believes these claims cannot be sustained.

(a) Economic Dislocation and the Gas Sales Contract

Petitioners again claim that the loss of incentive prices will cause insurmountable economic dislocation.16 The Commission recognizes the difficulties which may occur in adjusting to market level prices. However, the mandate of the NGPA is clear. Gas which qualifies for both a regulated and deregulated price is deregulated.

Furthermore, as was noted in the final rule, it is not the Commission which is forcing deregulation. Rather, it is the statutory language of the NGPA and the contract deregulation clauses which trigger deregulation once deregulation occurs. Once deregulation occurs, the contract between the parties must control and the contract terms prevail.15 Thus, as the Commission stated in the final rule, any economic harm to producers results from the NGPA and their contracts, not from this Commission's exercise of its administrative authority to implement the NGPA. The Commission's mandate is to implement Congress' intent with regard to dual qualification gas.

On a related issue, the Commission in Order No. 406 stated that it had properly certified under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq. (1982), that the Commission's rule would not have a "significant economic impact on a substantial number of small entities." 49 Fed. Reg. at 14,061-63 (Nov. 30, 1984). The Commission further noted that the economic impact caused by the deregulation of dually qualified gas is the direct result of the NGPA, not from the final rule.

One petitioner argued that the Commission has improperly interpreted the NGPA, that the Commission's final rule will cause small entities to suffer significant economic impacts, and that the Commission should, therefore, issue a final regulatory flexibility analysis required by the RFA. This petitioner's argument rests on an incorrect interpretation of the NGPA and the belief that the Commission's rule causes them economic harm. The Commission believes that any economic harm suffered by producers is caused by the NGPA, current economic conditions, and their contracts. Such economic impacts are not, for reasons stated in the final rule, cognizable under the RFA unless the agency has some discretion in tailoring its rules to minimize such impacts. The Commission, therefore, continues to believe that it properly certified that its rule, as opposed to the Commission, will not have a "significant economic impact on a substantial number of small entities."17

The Commission agrees with petitioners who suggested that upon deregulation contractual provisions could determine the price to be paid for deregulated gas by reference to a regulated maximum lawful price, whether directly or indirectly by operation of an area rate clause, favored nations clause, or other pricing provisions. The Commission agrees that the seller may refer to a maximum lawful price for the price of deregulated gas, but that reference does not make the gas "regulated." The NGPA regulated price used as a reference price thereby becomes the contract price.

(b) Section 107(c)(5) New Tight Formation Gas

Petitioners state that certain tight formation gas is only section 107(c)(5) gas and is not dual qualification gas because in some instances it has not been determined to be section 102 or section 103 gas. They therefore claim that the Commission is deregulating a single-category of gas which the NGPA does not deregulate.

This is not so. In order to qualify as new formation gas under section 107(c)(5), the gas must meet section 102 or section 103 qualification requirements as a threshold to obtaining a section 107(c)(5) determination. The Commission's regulations leave no doubt that gas must first be section 102 or section 103 gas before qualifying as new formation gas under section 107(c)(5) gas. Specifically, the regulations state: new formation gas is natural gas which is new natural gas, (as defined in section 102(c)), certain CCS gas qualifying for the new natural gas ceiling price (as defined in section 103(c)), or gas produced through a new or enhanced production well (as defined in section 101(c)). (Emphasis added.22)

If the section 102(c) or 103 qualification requirements were not met, a section 107(c)(5) determination would not be granted. Indeed, producers who received tight formation determinations without meeting the threshold requirements of section 102(c) or section 103 would be in violation of the Commission's regulations. If this occurred, the Commission would toll its 45-day review period until the discrepancy in the determination was resolved. Many jurisdictional agencies require the producer to style a section 107(c)(5) application as both a section 102(c) or section 103(c) and a section 107(c)(5) determination. The jurisdictional agencies, however, grant a section 107(c)(5) determination regardless of whether in form it is styled as a section 102(c) or 103 determination, because they must first reach the conclusion that the well qualifies as a section 102(c) or section 103 in order to grant new formation status.22

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19 See Order No. 406, 49 FR 49,678 (Nov. 29, 1984).
20 Interim Rule Covering High-Cost Natural Gas from Tight Formations, 42 FR 18,414 (Feb. 28, 1977).
21 Several petitioners argue that these comments were made to the Commission's request for comments on the issue of whether new tight formation gas would deregulate if the deregulated price were higher than the incentive price. While these comments respond in the context of a different economic climate than was anticipated by them, the Commission, ans. apparently, the Congress, the Commission notes that the legal result is the same. The Commission notes these comments to the tight formation rule not as support for its legal result but rather to rebut producers' current claim that they were unaware that deregulation must have an impact on tight formation gas.
22 The Commission agrees with petitioners who suggested that upon deregulation contractual provisions could determine the price to be paid for deregulated gas by reference to a regulated maximum lawful price, whether directly or indirectly by operation of an area rate clause, favored nations clause, or other pricing provisions. The Commission agrees that the seller may refer to a maximum lawful price for the price of deregulated gas, but that reference does not make the gas "regulated." The NGPA regulated price used as a reference price thereby becomes the contract price.
Regardless of the formal requirements required by jurisdictional agencies, such gas is usually qualified, because a section 107(c)(5) new light formation determination is a section 102(c) or section 103 determination. With the threshold regulatory requirements met, the gas qualifies for deregulation on January 1, 1985.

B. Deregulation of Intrastate Gas

Petitioners raise two issues regarding deregulation of certain intrastate gas. First, petitioners request that the Commission clarify how intrastate gas is deregulated by sections 121(a)(3), 102(c) or 107(c)(5). Second, petitioners request that the Commission change its position on the effect of the section 121(e) limitation on certain contract clauses.

(1) Determining Whether Intrastate Gas Is Deregulated Under §121(a)(3)

Several petitioners asked the Commission to clarify an ambiguity between the preamble to the final rule and the regulatory text adopted by the Commission. These petitioners indicated that the Commission's preamble suggested that all intrastate gas subject to existing, successor, and rollover contracts would be deregulated if the price is over $1.00 per MMBtu. The Commission's regulations (28 CFR 271.500(b), 271.505(a), and 272.103(a)(3)(ii)), however, can perhaps be read to mean that such gas is deregulated only if the price is over $1.00 per MMBtu as a result of a definite price clause.

The Commission will amend its regulations to rectify any perceived ambiguity and make clear the NGPA's deregulation scheme for intrastate gas is subject to existing, successor, and rollover contracts. Under NGPA section 121(a)(3), all gas subject to existing, successor, or rollover contracts is deregulated if "the price paid * * * on December 31, 1984, * * * is higher than $1.00 per MMBtu." Thus, all such gas is deregulated if the price is over $1.00 per MMBtu. It makes no difference whether the gas is priced under a definite price term and an indefinite price term, and both were over $1.00 per MMBtu. * * * the section 105(b)(3)(A) limitation would not apply," even if the December 31, 1984, price was actually computed under the indefinite price clause.

Six petitioners objected to the Commission's interpretation. Upon consideration of these petitioners' arguments, the Commission has determined to grant rehearing on this issue, as requested by these petitioners.

Several examples will clarify the different results that would obtain under the approach adopted in Order No. 406 and the petitioners' approach adopted herein.

Example 1: The price under the definite price clause is $7.50 and under the indefinite price escalator clause is $4.50.

Example 2: The price under the definite price clause is $1.25 and under the indefinite price escalator clause is $4.50.

Example 3: The price under the definite price clause is $4.25, that is, not subject to the section 105(b)(3)(A) limitation on indefinite price escalator provisions in the affected contracts from exceeding $4.00.*4 that the gas in all of the examples is otherwise deregulated under section 121(a)(3), and the gas is not sold under a rollover contract.*5

"continuing regulation," "deregulation and deregulation," or "not regulation but a limitation on certain contract clauses." The NGPA is clear that section 121(e) does not impose a form of continuing regulation of first sales of section 105 gas per se, but merely limits the operation of particular contractual provisions. The effect, if any, of the NGPA provisions on particular contracts may, of course, result in contractual disagreements. The Commission declines to resolve such disputes in a generic context.

The price cap imposed by section 121(e) is calculated using a formula found in section 105(b)(3)(A). The cap is the higher of the contract price on the date of enactment of the NGPA, adjusted for inflation, or the section 122 price with an inflation and growth adjustment. The $4.00 price cap in the hypothetical above assumes that $4.00 is the higher of either of these two alternatives.

Indefinite price escalator clauses in contracts for rollover gas are never subject to the limitation imposed by section 121(e).

Under the Commission's Order No. 406, only gas in Example 1 would be subject to the price cap and the producer could collect only $4.00. This is so because the price escalator clause increased the price of gas to above the $1.00 threshold to be deregulated. That is, the cap only applied if the indefinite clause was necessarily used to deregulate the gas. In Examples 2 and 3, the price cap would not be applicable under the final rule's approach because the gas would have been deregulated if it were priced under the indefinite clause, (whether it was in fact priced under the indefinite price clause was irrelevant).

Under the approach urged by the petitioners and now adopted by the Commission, the price computed under the indefinite price escalator clause would be limited to $4.00 in both Examples 1 and 2 because in these examples the gas was sold at a "price established under an indefinite price escalator clause." It would be irrelevant which clause caused the gas to go above the $1.00 threshold; it would only be relevant to determine if the intrastate gas otherwise deregulated is priced under an indefinite price clause.

The Commission notes that in Example 3 the gas could be sold for $4.25, that is, not subject to the section 121(e) limitation, since the price is established under a definite clause, not an indefinite clause. The limitation in section 121(e) is a limitation only on the operation of indefinite price escalator clauses in an existing or successor to an existing intrastate contract, not a limitation on the operation of definite escalator clauses. Moreover, there is no limitation imposed by the NGPA on parties to a deregulated intrastate contract agreeing to a definite price which is in excess of the limitation on indefinite escalators under section 121(e).*6 The only limitation imposed by section 121(e) is on the operation of indefinite price escalator clauses in contracts for certain deregulated intrastate gas. If, however, the producer in Example 3 prices the gas under the indefinite clause at $5.00, then the limitation would apply and the gas could not be sold above $4.00.

*2 Section 105(b)(3) prohibiting contract modifications in certain intrastate contracts does not prevent parties to an intrastate contract from renegotiating a price higher than the section 105(b)(3)(B) limitation if the price is determined under a definite price clause. Section 121(e) makes section 105(b)(3) applicable only if gas is sold under a price established under an indefinite price escalator clause. Thus, if the parties renegotiate the contract and price the gas under a definite price clause, section 121(e) would not trigger the section 105(b)(3) limitation on indefinite price clauses.
The arguments marshalled by the six petitioners on rehearing have persuaded the Commission that the section 121(e) limitation on indefinite price escalator clauses was intended to be more broadly applicable than had been originally construed in Order No. 406.

Petitioners generally assert that under NGPA section 121(e) the limitation on indefinite escalator clauses is applicable commencing January 1, 1985, to gas otherwise deregulated by section 121(a) whenever the price paid is established under an indefinite price escalator clause in the contract. The petitioners assert that such gas is being sold at a price "established under" an indefinite price escalator clause for purposes of the section 121(e) limitation.

Petitioners point out that the Conference Committee Report indicates that the section 121(e) limitation applies to indefinite price escalator provisions in all existing and successor contracts for intrastate gas which is deregulated under section 121(a). The Conference Report states:

This special rule [in section 121(e)] limits the operation of indefinite price escalator clauses in existing intrastate contracts for which the contract price on December 31, 1984 is higher than $1.00 per MMBtu's so that the contract price may not exceed the new gas ceiling price as of January 1, 1985, adjusted by the monthly equivalent of the annual inflation adjustment factor, plus 3.0 percentage points. This limitation applies to natural gas which is deregulated solely as a result of qualifying as an existing contract or a successor to an existing contract in excess of $1.00 per million Btu's on or before December 31, 1984.


Petitioners also draw support in the September 8, 1978, letter from Charles B. Curtis, then Chairman of the Commission, to the Honorable Henry M. Jackson. The letter states that "section 105(b)(3) defines the pricing policy to be effective in January, 1985, where the contract price as defined in section 105(c) is increased as a result of an indefinite price escalator clause." Finally, the statement of the floor manager of the NGPA, Congressman Dingell, that:

[i]f the conferees were concerned that, following deregulation, the operation of indefinite price escalator clauses in existence on May 3, 1978, and contained in certain existing intrastate contracts, could operate to increase rapidly intrastate gas prices following deregulation [and that] section 105(b)(3)(A) puts a lid on that escalation.27

serves to buttress further the petitioners' position.

Accordingly, the Commission has granted petitioners' request for rehearing on this issue, and has made conforming technical amendments, including deleting § 271.506(a) from the regulations. Thus, the section 121(e) and section 105(b)(3)(A) limitation applies to any indefinite price escalator clause in an existing or successor intrastate contract that is, or would have been in excess of $1.00 per MMBtu on December 31, 1984.

C. Other Issues

Certain other issues were raised and certain technical and conforming amendments need to be made in the final rule. These other issues and corrections follow:

(1) Interim Collections

One petitioner requested that the Commission clarify its intent with regard to the negotiation of an interim rate. The final rule provides that:

an agreed-upon rate will govern interim collections. However, if the parties are entitled to renegotiate the price upon deregulation, they need do so only once. The agreed-upon interim deregulated price may continue to serve as the deregulated price, once the gas is ultimately determined to be deregulated."

49 FR 46877 (Nov. 29, 1984).

In response to the petitioners' request, the Commission clarifies that the agreed-upon interim rate may be established by whatever means is agreeable to the parties. The Commission does not intend to interfere with contract rights applicable to deregulated gas. See generally Pennzoil Co. v. FERC, 654 F.2d 350, 376 (5th Cir. 1981), cert. denied, 454 U.S. 1192 (1982). Accordingly, the Commission acknowledges that the deregulated rate collected as an interim payment may be established without renegotiation of some separate and interim rate where contract authority governing interim collection upon deregulation is in place.

(2) Affidavit for Section 103 Dedication and Depth Requirement

One petition requested clarification of the suggestion made by the Commission that producers provide guidelines with an affidavit, upon request, that certain gas meets the dedication and depth requirements of NGPA section 121(a)(2) for certain section 103 gas. See 49 FR 46877 (Nov. 23, 1984). The petitioner's concern is that some pipeline purchasers may use the affidavit requirement in order to delay payment of the deregulated price.

The Commission believes that in many cases the pipeline will already possess the needed information on the dedication and depth of the section 103 well. In those cases where the pipeline does not already possess the needed information, the simple affidavit procedure serves a useful purpose. The Commission does not wish this procedure to be used as a vehicle to delay payment, however. The Commission therefore grants the clarification requested that the pipeline should not delay payment of the deregulated price until the affidavit is received. If it is subsequently determined that the gas that is the subject of the affidavit is not deregulated, the producer would, of course, be required to refund the difference between the deregulated price and the otherwise applicable maximum lawful price with interest.

(3) Technical Corrections

The Commission is making several minor technical corrections either to improve the clarity of its regulations, to correct inaccurate cross-references, or to make the regulations conform to other changes in the Commission's regulations being made on rehearing.

List of Subjects in 18 CFR Parts 270 Through 273

Natural gas, Incentive prices.

In consideration of the foregoing as well as the reasons set forth in the final rule of this docket, the Commission amends Parts 270 through 273, Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Flumb, Secretary.

PART 270—[AMENDED]

1. The authority citation for Part 270 continues to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3311-3432. In § 270.202, paragraph (b) is revised to read as follows:

§ 270.202 Resales.

• • • • •

(b) Special rules for percentage-of-proceeds sales.

(1) In the case of natural gas purchased by a reseller in a percentage-of-proceeds sale, the reseller may determine the maximum lawful price for the resale under paragraph (a)(1) of this section. If the reseller so determines his maximum lawful price, any sale to such reseller in such percentage-of-proceeds

sale shall not be treated as a first sale for purposes of this subchapter.

(2) The price of natural gas sold under a percentage-of-proceeds contract subject to subparts E and F of Part 271 is deregulated if the price paid on the resale contract is deregulated under Part 272.

PART 271—[AMENDED]

3. The authority citation for Part 271 continues to read as follows:


4. In § 271.502, paragraph (b) is revised to read as follows:

§ 271.502 Maximum lawful prices.

* * * * *

(b) The maximum lawful price per MMBtu for natural gas delivered in any month which is:

(1) gas to which the subpart applies;

(2) gas for which the price paid exceeds $1.00 per MMBtu on December 31, 1984 (or would exceed $1.00 per MMBtu if sold on such date); and

(3) gas which is sold at a price established under an index for prices escalator clause as defined in section 108(b)(3)(B) of the NGPA;

shall be the higher of the price specified for Subpart E of Part 271 in Table I of section 271.101(a) or the contract price per MMBtu on November 9, 1973, adjusted for inflation in accordance with § 271.102 of this part.

§ 271.509 [Removed]

5. Section 271.509 is removed.

PART 272—[AMENDED]

6. The authority citation for Part 272 continues to read as follows:


7. In § 272.103, paragraphs (a)(3) and (a)(3)(ii) are revised to read as follows:

§ 272.103 Definitions

(a) * * *

(3) Natural gas sold under an existing intrastate contract, any successor to an existing intrastate contract, or any intrastate rollover contract, if:

(i) * * *

(ii) in the case of any existing or successor intrastate contract,

(A) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid if deliveries occurred on such date is higher than $1.00 per MMBtu, and

(b) such gas is not subject to the maximum lawful price in section 271.502(b); or

(iii) * * *

PART 273—[AMENDED]

5. Section 273.204(a)(1)(iv) is amended by removing the words "§ 272.103(a)(3)" and inserting in their place, the words "§ 272.103(a)(3)(ii)."

[FR Doc. 84-33797 Filed 12-28-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Commissioner of Food and Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new authority delegated by the Assistant Secretary for Health to the Commissioner of Food and Drugs. The authority being added is under section 150 of Title 35 of the United States Code (35 U.S.C. 156).

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340], Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The Acting Assistant Secretary for Health has issued a memorandum delegating to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under Title II of the Drug Price Competition and Patent Term Restoration Act of 1984 (35 U.S.C. 156), as amended, relating to the patent term restoration program. The authorities may be redelegated except the authority to make due diligence determinations under section 156(d)(2)(B), which may not be redelegated to an office below the Office of the Commissioner of Food and Drugs.

* * * * *

Effective date. This regulation shall become effective December 31, 1984.

Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))


Joseph P. Hille, Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-33794 Filed 12-28-84; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Federal Bureau of Investigation

21 CFR Part 1316

Seizure, Forfeiture, and Disposition of Property; Conforming Amendments

AGENCY: Department of Justice, Drug Enforcement Administration, Federal Bureau of Investigation.

ACTION: Final rule.

SUMMARY: The DEA and the FBI are amending certain regulations regarding jurisdictional amounts, the filing of claim and bond, and location of forfeiture proceedings, to make the regulations conform to recent statutory changes included in Public Law 98–473.
and Public Law 98-573, enacted October 12 and October 30, 1984, respectively.

**EFFECTIVE DATE:** December 31, 1984.

**FOR FURTHER INFORMATION CONTACT:** William M. Lenck, Associate Chief Counsel, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, (202) 633-1903, or John A. Mintz, Assistant Director-Legal Counsel, Federal Bureau of Investigation, Department of Justice, Washington, D.C. 20535 (202) 324-8018.

**SUPPLEMENTARY INFORMATION:** The existing provisions of 21 CFR Part 1316 contain jurisdictional amount of $10,000 for administrative civil forfeitures; the amount of $250, or $250 as a bond to convert an administrative forfeiture to a judicial forfeiture; and the requirement that forfeiture proceedings be brought in the judicial district of seizure. On October 12 and October 30, 1984, respectively, Public Law 98-473 and Public Law 98-573 were enacted. Together, those laws increased the $10,000 jurisdictional amount for administrative forfeitures to $100,000 except in the case of a conveyance used to import, export, or otherwise transport or store any controlled substances where there is no monetary limit. The amount of the bond has changed from $250 to $2,500 or ten percent of the appraised value of the property, whichever is less, but not less than $250. Public Law 98-473 also allows forfeiture proceedings to be brought in the judicial district of seizure, or in any judicial district in which the owner of the property is found, or in the judicial district in which the criminal prosecution is brought. This final rule amends the applicable regulations to make them conform to the changes mentioned above in Public Law 98-473 and Public Law 98-573. An amendment is also made to eliminate a reference to Treasury Department Form 171 which no longer exists.

It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget under E.O. 12291. Moreover, we hereby certify that this matter will have no impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

By virtue of the authority vested in the Attorney General to promulgate regulations by 21 U.S.C. 871, which has been delegated to the Director of the FBI by 28 CFR 0.85(a) and 0.102, and to the Administrator of Drug by 28 CFR 0.100, the following amendments are made to §§ 1316.75, 1316.76, 1316.77, 1316.78, 1316.79, 1316.80, and 1316.81 of Title 21 of the Code of Federal Regulations.

**List of Subjects in 21 CFR Part 1316**

Administrative practice and procedure. Drug traffic control and research.

**PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES**

**Subpart E—Seizure, Forfeiture, and Disposition of Property**

§ 1316.75 Advertisement. [Amended]

Section 1316.75(a) is amended by removing the words “values does not exceed $10,000” in the first phrase and inserting the words “value does not exceed $1,000,000, or if a conveyance used to import, export or otherwise transport or store any controlled substance is involved,”; and is further amended by removing the words “seizure occurred,” in the last phrase and inserting the words “proceeding for forfeiture is brought.”

Section 1316.75(b) is amended by removing “$250” in the last phrase and inserting the words “$2,500 or ten percent of the value of the claimed property whichever is lower, but not less than $250.”

§ 1316.76 Requirements as to claim and bond. [Amended]

Section 1316.76(c) is amended by removing the second sentence the words “seizure was made for the purpose of proceeding to a condemnation of the property in the manner prescribed by law,” and inserting the words “proceeding for forfeiture is brought.”

Section 1316.76(d) is amended by removing the word “summary” in the first sentence and inserting “administrative” and deleting “on Treasury Department Form 171 with” in the second sentence.

§ 1316.77 Summary Forfeiture. [Amended]

The title of the section is amended by removing “Summary” and inserting “Administrative”.

Section 1316.77(a) is amended by removing “$10,000” in the first sentence and inserting the words “the jurisdictional limits in § 1316.73(d)”.

Section 1316.77(b) is amended by removing “$2,500” in the first sentence and inserting the words “the jurisdictional limits in § 1316.73(c)”.

§ 1316.78 Judicial forfeiture. [Amended]

Section 1316.78 is amended by removing “$10,000,” the first time it appears and inserting the words “the jurisdictional limits in § 1316.73(d)”.

§ 1316.79 Petitions for remission or mitigation of forfeiture. [Amended]

Section 1316.79(a) is amended by removing the word “summary” in the first sentence and inserting “administratively”; by removing the words “seizure occurred,” and inserting the words “proceeding for forfeiture is brought”; and by removing the word “summary” in the third sentence and inserting the word “administrative.”

§ 1316.80 Time for filing petitions. [Amended]

Section 1316.80(a) is amended by removing the word “Government” in the second sentence.

§ 1316.81 Handling of petitions. [Amended]

Section 1316.81 is amended by removing the words “seizure occurred,” and inserting the words “proceeding for forfeiture is brought.”

(202-633-14041)

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7537]

Income Tax: Taxable Years Beginning After December 31, 1953; Top-Heavy Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to top-heavy pension, profit-sharing, and stock bonus plans. It also contains amendments to regulations relating to retroactive plan amendments. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. These regulations affect sponsors of and
participants in pension, profit-sharing, and stock bonus plans, and they provide plan sponsors with guidance necessary to comply with the law.

DATES: The regulations are in effect December 31, 1984, and generally apply for plan years beginning after December 31, 1983.


SUPPLEMENTARY INFORMATION:

Background


This document also contains amendments to the Income Tax Regulations under section 401(b) of the Code, relating to certain retroactive plan amendments. The amendments allow the same time for amending a plan to conform to TEFRA as had been allowed to conform to the Employee Retirement Income Security Act of 1974 ("ERISA").

Top-Heavy Plans

In general, a top-heavy plan is one in which the present value of the cumulative accrued benefits of key employees exceeds 60 percent of the present value of cumulative accrued benefits of all employees. Key employees are certain officers and owners of the employer.

Certain employers must be aggregated for purposes of the top-heavy rules. Likewise, certain plans of an employer must be aggregated for purposes of the top-heavy rules.

In general, to prevent distortions in the top-heavy calculation and avoid annual fluctuations between top-heavy and non top-heavy status, once an individual is a key employee, he is treated as a key employee for five years. Also, certain distributions made to key employees and non-key employees are added to the present value of cumulative accrued benefits.

In general, if a plan is top heavy, such plan must provide minimum contributions or benefits, provide faster vesting than that required by section 411 and limit the amount of compensation which can be taken into account in providing benefits.

Additional Time To Amend Plans for Other Areas

In the preamble to the notice of proposed rulemaking, the Service stated that it intended to extend the time for amending plans to conform to other areas of the law.

The Service intends to extend the time for amending a plan to conform with these areas of the law to the same date for amending a plan to conform to TEFRA. The following areas will be included in this extension: (1) final regulations under section 401(i)(1) (see Notice 82-9, 1982-1 CB 358), (2) section 416(a)(2) (see Notice 82-7 and 82-8, 1982-1 CB 396, 357), (3) Rev. Rul. 79-50, 1979-1 CB 155, (4) Notice 81-2, 1981-1 CB 613, (5) Rev. Rul. 81-211, 1981-2 CB 98, (6) Notice 82-23, 1982-2 CB 752, (7) Rev. Rul. 84-45, 1984-1 CB 115, and (8) Treas. Reg. § 1.401-4(c)(7), 1984-1 CB 119.

However, as noted in Notice 82-19, 1982-2 CB 749, amendments to comply with the TEFRA changes to section 415 may be necessary at a date earlier than the date specified in § 1.401(b)-1 if excess accruals are to be prevented.

Major Comments Received and Actions Taken

Comments received in response to the notice of proposed rulemaking focused on four areas: which plans must contain top-heavy language, how frozen and terminated plans should be treated for purposes of the top-heavy rules, which individuals must receive minimum benefits or contributions, and the treatment of rollovers and plan-to-plan transfers.

Question and Answer (Q & A) T-28 of the proposed regulations stated that the only plans which need not include top-heavy language are plans which cover only non-key employees who are included in a unit of employees covered by a collective-bargaining agreement (if retirement benefits were the subject of good faith bargaining) or employees of employee representatives. In addition, governmental plans (defined in code section 414(d)) need not include top-heavy language because under section 401(a)(10)(B)(iii), as added by the TRA of 1984, these plans are not subject to the top-heavy rules.

Some commentators expressed concern about the treatment of frozen or terminated plans, namely, whether such plans should be subject to the top-heavy rules. Such plans should be treated as if they were not frozen or terminated, i.e., they should be subject to the same top-heavy rules as unfrozen and nonterminated plans. This affects frozen plans only if they were maintained within the preceding five plan years and causes distributions to former participants to be taken into account for purposes of the top-heavy rules. Frozen plans must provide normal top-heavy vesting, minimum contributions and benefits, and limit the amount of compensation which can be taken into account in providing benefits. The language added to section 416(e)(3)(B) by the TRA of 1984 supports this position. This information is found in Q.'s and A.'s T-4 and T-5.
Many commentators were concerned about which individuals had to receive minimum contributions or minimum benefits. The proposed regulations could be read to state that non-key employees who were not participants in the plan could receive a minimum contribution or benefit. This ambiguity has been clarified. As a general rule, only non-key employees who are plan participants must receive minimum contributions or benefits. However, non-key employees who are excluded from participation in the plan because their compensation is less than a stated amount or because they fail to make mandatory contributions must be given minimum contributions or minimum benefits.

The proposed regulations (Q. and A. T-23) had taken the position that unrelated rollovers (both initiated by the employee and made from a plan maintained by one employer to a plan maintained by an unrelated employer) had to be counted both by the distributing plan and the plan accepting the rollover if made prior to December 31, 1983. Many commentators stated that it was unfair to count a rollover both in the transferor and transferee plan. The Service has decided to adopt the position set forth in the proposed regulations because of language contained in the Conference Committee Report on TEFRA, H.R. Rep. No. 760, 97th Cong. 2d Sess (1982) at 625, and the language of section 416(g)(A).

Other Actions Taken

Some commentators stated that the definition of compensation in proposed Q. and A. T-14 (Treas. Reg. § 1.401-2(d)) was too broad. In response to these comments, the Service has put forth an alternative definition, the compensation that is included on an employee's Form W-2 for the calendar year that ends with or within the plan year.

The final regulations also clarify the treatment of death benefits. In general, such benefits will only be counted under section 416(g)(3) if they do not exceed the present value of an employee's accrued benefit.

The final regulations make it clear that individuals who have ceased employment do not receive additional benefits or vesting if a plan becomes top-heavy.

Section 416 of the Code provided no special rules for section 401(k) plans. The final regulations (Q. and A. T-29) make it clear that top-heavy 401(k) plans must provide minimum contributions and limit the amount of compensation taken into account in providing contributions.

For plan years beginning after 1984, the TRA of 1984 treats amounts which an employee elects to defer as employer contributions for purposes of determining minimum required contributions.

To determine whether an individual is an officer, the plan administrator should look at the individual's responsibilities with respect to the employer by whom he is directly employed. This provision is contained in Q. and A. T-13.

Another question raised by commentators was whether if an employer had one plan which satisfied the top-heavy requirements, i.e., sections 416(b), (c) and (d), could other plans of the employer contain provisions which did not satisfy section 416(b), (c) and (d). The final regulations require all top-heavy plans to contain provisions to satisfy section 416. However, special rules are set forth concerning the application of the minimum contribution and minimum benefit requirements.

Finally, several commentators questioned what additional contributions or benefits must be provided by two or more top-heavy plans which wanted to use a factor of 1.25 instead of 1.0 for purposes of section 415(e). The final regulations provide that in this situation, the defined contribution plan must provide a minimum contribution of 7% percent of compensation or the defined benefit plan may provide an additional minimum benefit of one percentage point (up to a maximum of ten percentage points) for each year of service described in Question and Answer M-2 of the participant's average compensation for the years described in Question and Answer M-2. If the floor offset or comparability analysis approach is used, the defined benefit minimum must be adjusted before such approaches are used. This adjustment is described in Q. and A. M-14.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is William D. Gibbs of the Employee Plans and Exempt Organizations 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, both on matters of substance and style.

List of Subjects in 26 CFR 1.401-0—1.425-1

Income taxes. Employee benefit plan, Pensions

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. Section 1.401-1 is amended by revising paragraphs (b)(2) and (c)(1)(iii) to read as follows. The introductory text of (b) is shown for the convenience of the user.

§ 1.401(b)-1 Certain retroactive changes in plan.

* * * * *

(b) Disqualifying provisions. For purposes of this section, with respect to a plan described in paragraph (a) of this section, the term "disqualifying provision" means:

* * * * *

(3) A plan provision which results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in such requirements effected by the Employee Retirement Income Security Act of 1974 (Pub. L. 93-405, 88 Stat. 416), hereafter referred to as "ERISA", or by the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 93 Stat. 324), hereafter referred to as "TEFRA". For purposes of this subparagraph, a disqualifying provision includes the absence from a plan of a provision required by such change if the plan was in effect on the date such change became effective with respect to such plan.

(c) Remedial amendment period. (1) The remedial amendment period with respect to a disqualifying provision begins:

* * * * *

(iii) In the case of a disqualifying provision described in paragraph (b)(2) of this section, the date on which the change effected by ERISA or TEFRA, described in paragraph (b)(2) of this section, became effective with respect to such plan.

* * * * *
Par. 2. There is added after § 1.415—10 the following new §§ 1.416—1:

§ 1.416—1 Questions and answers on top-heavy plans.

The following questions and answers relate to special rules for top-heavy plans under section 416 of the Internal Revenue Code of 1984, as added by section 240 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97—248) (TEFRA), and amended by sections 524 and 713(f) of the Tax Reform Act of 1984 (Pub. L. 98—369):

Table of Contents
G—General Provisions
T—Top-Heavy Determinations
V—Vesting Rules for Top-Heavy Plans
M—Minimum Benefits Under Top-Heavy Plans

G. General Provisions

G-1 Q. What requirement plans are subject to the top-heavy rules added to the Code by the Tax Equity and Fiscal Responsibility Act and amended by the Tax Reform Act of 1984?

A. All stock bonus, pension, or profit-sharing plans intended to qualify under section 401(a), annuity contracts described in section 403(a), and simplified employee pensions described in section 408(k) are subject to the new top-heavy rules added to the Code by the Tax Equity and Fiscal Responsibility Act and amended by the Tax Reform Act ("TRA") of 1984.

G-2 Q. Is a multiple employer plan subject to the top-heavy requirements of section 416?

A. A multiple employer plan is subject to the requirements of section 416, but only with respect to each individual employer. Thus, if twelve employers contribute to a multiple employer plan and the accrued benefits for the key employees of one employer exceed 60 percent of the accrued benefits of all employees for such employer, the plan is top-heavy with respect to that employer. A failure by the multiple employer plan to satisfy section 416 with respect to the employees of such employer means that all employers are maintaining a plan that is not a qualified plan.

G-3 Q. As of what date must plan amendments to comply with top-heavy rules be effective?

A. Amendments required to comply with the top-heavy rules must be effective as of the first day of the first plan year which begins after 1983. See § 1.401(a)—1 for the date by which such amendments must be adopted.

T. Top-Heavy Determinations

T-1 Q. What factors must be considered in determining whether a plan is top-heavy?

A. (a) In order to determine whether a plan is top-heavy for a plan year, it is necessary to determine which employers will be treated as a single employer for purposes of section 416; what the determination date is for the plan year when employees are or formerly were key employees; which former employees have not performed any service for the employer maintaining the plan at any time during the five-year period ending on the determination date; and the present value of the accrued benefits (including distributions made during the plan year containing the determination date and the four preceding plan years) of key employees, former key employees, and non-key employees.

(b) All employers that are aggregated under section 414(b), (c), and (m) must be taken into account as a single employer for the plan year in question, and those employees in all plans maintained by the employers that are aggregated must be categorized as key employees, as former key employees, or as non-key employees. See Question and Answer T-12 for the determination of which employees are or were key employees. All plans maintained by the employers in which a key employee participates, and certain other plans, must then be aggregated (the required aggregation group). See Question and Answer T-6 for rules concerning required aggregation. Other plans may in some cases be aggregated with the required aggregation group. See Question and Answer T-7 for rules concerning such permissive aggregation.

(c) Once aggregated, all plans that are required to be aggregated will either be top-heavy or not top-heavy, depending upon whether the aggregation group is top-heavy. A plan or aggregation group will be considered top-heavy if the sum of the present value of the accrued benefits for key employees is more than 60 percent of the sum of the present value of accrued benefits of all employees.

(d) Except as otherwise stated, for purposes of section 416(g), an employee is an individual currently or formerly employed by an employer. Former key employees are non-key employees and are excluded entirely from the calculation to determine top-heaviness. In all cases, the present value of accrued benefits includes distributions made during the plan year containing the determination date and the preceding four plan years. See Questions and Answers T-24 and T-25 for rules concerning the account balances and present value of accrued benefits. For plan years beginning after December 31, 1984, the accrued benefit of an employee who has not performed any service for the employer maintaining the plan at any time during the five-year period ending on the determination date is excluded from the calculation to determine top-heaviness. However, if an employee performs no services for five years and then performs services, such employee's total accrued benefit is included in the calculation for top-heaviness.

T-2 Q. To what extent are multiemployer plans and multiple employer plans to which an employer makes contributions on behalf of its employees treated as plans of that employer for top-heavy purposes?

A. Multiemployer plans described in section 414(f) and multiple employer plans described in section 413(c) to which an employer makes contributions on behalf of its employees are treated as plans of that employer to the extent that benefits under the plan are provided to employees of the employer because of service with that employer.

T-3 Q. Must a collectively-bargained plan be aggregated with other plans of the employer to determine whether some or all of the employer's plans are top-heavy?

A. A collectively-bargained plan that includes a key employee of an employer must be included in the required aggregation group for that employer. See Question and Answer T-6 for rules concerning required aggregation. A collectively-bargained plan that does not include a key employee may be included in a permissive aggregation group. See Question and Answer T-7 for rules concerning permissive aggregation. However, the special rules in section 416(b), (c), or (d) applicable to top-heavy plans do not apply with respect to any employee included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers if there is evidence that retirement benefits were the subject of good faith bargaining between such employees and such employer or employers. In determining whether there is a collective-bargaining agreement between employee representatives and one or more employers, the additional
condition of section 7701(a)(46) must be satisfied after March 31, 1984.

T-4 Q. How is a terminated plan treated for purposes of the top-heavy rules?
A. A terminated plan is treated like any other plan for purposes of the top-heavy rules. For purposes of section 416, a terminated plan is one that has been formally terminated, has ceased crediting service for benefit accruals and vesting, and has been or is distributing all plan assets to participants or their beneficiaries as soon as administratively feasible. Such a plan must be aggregated with other plans of the employer if it was maintained within the last five years ending on the determination date for the plan year in question and would, but for the fact that it terminated, be part of a required aggregation group for such plan year. Distribution formulas which have taken place within the five years ending on the determination date must be accounted for in accordance with section 416(g)(3). No additional vested, benefit accruals or contributions must be provided for participants in a terminated plan.

T-5 Q. How are frozen plans treated for purposes of the top-heavy rules?
A. For purposes of section 416, a frozen plan is one in which benefit accruals have ceased but all assets have not been distributed to participants or their beneficiaries. Such plans are treated, for purposes of the top-heavy rules, as any non-frozen plan. That is, such plans must provide minimum contributions or benefit accruals, limit the amount of compensation which can be taken into account in providing benefits, and provide top-heavy vesting. A frozen defined contribution plan may not be required to provide additional contributions because of the rule in section 416(c)(2)(B).

T-6 Q. What is a required aggregation group?
A. For purposes of determining whether the plans of an employer are top-heavy for a particular plan year, the required aggregation group includes each plan of the employer in which a key employee participates in the plan year containing the determination date, or any of the four preceding plan years. In addition, each other plan of the employer which, during this period, enables any plan in which a key employee participates to meet the requirements of section 401(a)(4) or 410(a)(4) is part of the required aggregation group. This concept may be illustrated by the following examples:

Example (1). An employer maintains two plans. Key employees participate in one plan, but not in the other. If the plan containing key employees independently satisfies the coverage and nondiscrimination rules of sections 410 and 401(a)(4), it may be treated independently to determine whether it is top-heavy. Also, the plan containing key employees would not be part of a required aggregation group and would not need to be treated to determine whether it is top-heavy. However, if the two plans are maintained by key employees satisfies the coverage requirements of section 410(b) or the nondiscrimination requirements of section 401(a)(4) only when it is considered together with the other plan in accordance with §1.410(b)-4(d)(3), the plan not covering key employees would be part of the required aggregation group.

Example (2). A sole proprietor terminated a Keogh plan in 1981. In 1982, the sole proprietor incorporated and established a corporate plan with a calendar-year plan year. For purposes of determining whether the corporate plan is top-heavy for its 1984 plan year, the terminated Keogh plan and the corporate plan would be part of a required aggregation group. The sole proprietor and the corporation would be treated as a single employer under section 414(c). Under Questions and Answers T-8, the terminated plan would be aggregated with the corporate plan because it was maintained within the five-year period ending on the determination date for the 1984 plan year and because, but for the fact that it terminated, it would be aggregated with the corporate plan because it covered a key employee.

T-7 Q. What is a permissive aggregation group?
A. A permissive aggregation group consists of plans of the employer that are required to be aggregated, plus one or more plans of the employer that are not part of a required aggregation group but that satisfy the requirements of sections 401(a)(9) and 410 when considered together with the required aggregation group. This concept may be illustrated by the following examples:

Example (1). A employer maintains two plans:
1. Plan C covers salaried employees and independently satisfies the requirements of sections 410 and 401(a)(4).
2. Plan D covers employees who are included in a unit of employees covered by an agreement under section 514(a) of the Employee Retirement Income Security Act of 1974, and who are members of the same bargaining unit, by reason of services performed in a plan year ending after February 28, 1975, covered by a collective-bargaining agreement with the employer. The contributions and benefits provided under Plan D are treated as if they were provided under a single plan and the requirements of section 410 and section 401(a)(4) are satisfied by Plan D when considered with a plan or简化员工养老金由计划A提供的养老金，如果考虑了两个计划，计划A和计划D是同一计划，计划A和计划D满足了410和401(a)(4)的要求。

Example (2). (a) Employer W maintains two plans:
1. Plan C covers salaried employees and independently satisfies the requirements of sections 410 and 401(a)(4).
2. Plan D covers employees who are included in a unit of employees covered by an agreement under section 514(a) of the Employee Retirement Income Security Act of 1974, and who are members of the same bargaining unit, by reason of services performed in a plan year ending after February 28, 1975, covered by a collective-bargaining agreement with the employer. The contributions and benefits provided under Plan D are treated as if they were provided under a single plan and the requirements of section 410 and section 401(a)(4) are satisfied by Plan D when considered with a plan or简化员工养老金由计划A提供的养老金，如果考虑了两个计划，计划A和计划D是同一计划，计划A和计划D满足了410和401(a)(4)的要求。
requirements of section 416(c)(2) with respect to any non-key employee who participates in more than one of the plans. If all the plans are defined benefit plans, only one plan need satisfy the requirements of section 416(c)(1) with respect to any non-key employee who participates in more than one of the plans. However, in the case of non-key employees who do not participate in more than one plan, each plan must separately provide the applicable minimum contribution or benefit with respect to each such employee. See Question and Answer M-12 in the case of employees who are covered under both a defined benefit and a defined contribution plan.

T-11 Q. What plans will be treated as top-heavy if a permissive aggregation group is top-heavy?
A. If a permissive aggregation group is top-heavy, only those plans that are part of the required aggregation group will be subject to the requirements of section 416(b), (c) and (d). Plans that are not part of the required aggregation group will not be subject to these requirements. Thus, if an employer wishes to demonstrate that the plans maintained by the employee are not top-heavy, the employer need consider only the required aggregation group. If, after considering the required aggregation group, it is determined that the plans are not top-heavy, the requirements of section 416(b), (c) and (d) will not apply to any of the plans. If, on the other hand, the plans required to be aggregated are top-heavy, the employer may wish to determine whether there are any plans that may be permissively aggregated to demonstrate that the plans are not top-heavy. Assuming that there are plans that are eligible for permissive aggregation, the employer may take those plans into consideration. If, after taking such plans into consideration, the net result is that the entire group is not top-heavy, the top-heavy requirements do not apply to any plan in the group.

T-12 Q. For purposes of determining whether a plan is top-heavy for a plan year, who is a key employee?
A. Under section 416(j)(1), a key employee is any employee (including any deceased employee) who at any time during the plan year containing the determination date for the plan year in question or the four preceding plan years (including plan years before 1984) is:

1. An officer of the employer having annual compensation from the employer for a plan year greater than 150 percent of the dollar limitation in effect under section 415(c)(1)(A) for the calendar year in which such plan year ends (see Questions and Answers T-13, T-14, and T-15),
2. One of the ten employees having annual compensation from the employer for a plan year greater than the dollar limitation in effect under section 415(c)(1)(A) for the calendar year in which such plan year ends and owning (or considered as owning within the meaning of section 416) both more than a ½ percent interest and the largest interests in the employer (see Question and Answer T-19),
3. A 5-percent owner of the employer, or
4. A 1-percent owner of the employer having annual compensation from the employer for a plan year more than $150,000 (see Questions and Answers T-16 and T-21).

An individual may be considered a key employee in a plan year for more than one reason. For example, an individual may be both an officer and one of the ten largest owners. However, in testing whether a plan or group is top-heavy, an individual’s accrued benefit is counted only once. The terms key employee, former key employee, and non-key employee include the beneficiaries of such individuals. This Question and Answer is illustrated by the following examples:

Example 1. An employer maintains a calendar-year plan. An individual who was an employee of the employer and a 5-percent owner of the employer in 1989 was neither an employee nor an owner in 1989 or thereafter. Even though the individual is no longer an employee or owner of the employer, the individual would be treated as a key employee for purposes of determining whether the plan is top-heavy for each plan year through the 1991 plan year. However, for purposes of determining whether the plan is top-heavy for the 1992 plan year and for subsequent plan years, the individual would be treated as a former key employee.

Example 2. The facts are the same as in example 1, except that the individual died in early 1987 and had been an employee under the plan who was distributed to his beneficiary in 1987. Such distribution would be treated as the accrued benefit of the individual for each year through the 1991 plan year. However, for purposes of determining whether the plan is top-heavy for the 1992 plan year and for subsequent plan years, the individual would be treated as a former key employee for purposes of determining whether the plan is top-heavy for the 1992 plan year and for subsequent plan years. The conclusions are not affected by whether the beneficiary of the individual is a non-key employee or a key employee of the employer.

T-13 Q. For purposes of defining a key employee, who is an officer?
A. Whether an individual is an officer shall be determined upon the basis of all the facts, including, for example, the source of his authority, the term for which elected or appointed, and the nature and extent of his duties. Generally, the term officer means an administrative executive who is in regular and continued service. The term officer implies continuity of service and excludes those employed for a special or single transaction. An employee who merely has the title of an officer but not the authority of an officer is not considered an officer for purposes of the key employee test. Similarly, an employee who does not have the title of an officer but has the authority of an officer is an officer for purposes of the key employee test. In the case of one or more employers treated as a single employer under sections 414(b), (c), or (m), whether or not an individual is an officer shall be determined based upon his responsibilities with respect to the employer or employers for which he is directly employed, and not with respect to the controlled group of corporations, employers under common control or affiliated service group. A partner of a partnership will not be treated as an officer for purposes of the key employee test merely because he owns a capital or profit interest in the partnership, exercises his voting rights as a partner, and may, for limited purposes, be authorized and does in fact act as an agent of the partnership.

T-14 Q. For purposes of determining whether a plan is top-heavy for a plan year, how many officers must be taken into account?
A. There is no minimum number of officers that must be taken into account. Only individuals who are in fact officers within the meaning of Question and Answer T-43 must be taken into account. For example, a corporation with only one officer and two employees would have only one officer for purposes of section 416(j)(1)(A)(ii). After aggregating all employees (including leased employees within the meaning of section 414(n)) of employers required to be aggregated under section 414(b), (c) or (m), there is a maximum limit to the number of officers that are to be taken into account as officers for the entire group of employers that are so aggregated. The number of employees an employer (including all employers required to be aggregated under section 414(b), (c), or (m)) has for the plan year containing the determination date is the greatest number of employees it had during that plan year or any of the four preceding plan years. For purposes of this Question and Answer, employees include only those individuals who perform services for the employer during a plan year. If the number of employees (including part-time employees) of all the employers aggregated under section 414(b), (c) or (m) is less than 30 employees, no more than three
individuals shall be treated as key employees for the plan year containing the determination date by reason of being officers. If the number of employees of all organizations aggregated under section 414(b), (c) or (m) is greater than 50 but less than 500, no more than 10% of the number of employees will be treated as key employees by reason of being officers. If 10% of the number of employees is not an integer, the maximum number of individuals to be considered as key employees by reason of being officers shall be increased to the next integer. If the number of employees of employers aggregated under section 414(b), (c) and (m) exceeds 500, no more than 50 employees are to be considered as key employees by reason of being officers. This limited number of officers is comprised of the individual officers, selected from the group of all individuals who were officers in the plan year containing the determination date or any one of the four preceding plan years, who had annual plan year compensation (in the officer year) in excess of 150 percent of the dollar limitation in effect under section 415(c)(1)(A) for the calendar year in which the plan year ends and who had the largest annual plan-year compensation in that five-year period. (The definition of compensation contained in Question and Answer T-21 is to be used for this purpose.) In determining the officers of an employer, an employee who is an officer shall be counted as an officer for key employee purposes without regard to whether the employee is a key employee for any other reason. However, in testing whether the plan is top-heavy, an individual's present value of accrued benefits is counted only once.

Example. A company is testing to see if its plan is top-heavy for the 1983 plan year. In each year from 1983 through 1988 it has more than 500 employees. Assume that (1) because of rapid turnover among officers, the individuals who are officers each year are different from the individuals who are officers in any preceding year, and (2) the annual plan year compensation of each officer exceeds 150 percent of the dollar limitation in effect under section 415(c)(1)(A) for the calendar year in which the plan year ends. Under the limitations, only a total of 50 individuals would be considered to be key employees by virtue of being officers in testing for top-heaviness for the 1983 plan year. Further, the 50 individuals considered as key employees under this test would be determined by selecting the 50 out of 250 individuals (50 different officers each year) who had the highest annual plan-year compensation during the 1980-1984 period (while officers).
Answer is illustrated by the following examples:

Example 1. Corporation K maintains a calendar year defined contribution plan. On January 1, 1986, Corporation K has five owners who owned the following value percentages of K stock: A=50%, B=20%, C=15%, D=10%, and E=5%. On June 30, 1987, the five owners of Corporation K sold all of their shares of stock. The new owners and their respective ownership percentages were: F=40%, G=30%, H=30%, I=10%, and J=10%. Assume that, for 1986, A, B, C, D, and E had annual compensation from Corporation K greater than the section 415(c)(1)(A) limit and that, for 1987, F, G, H, I, and J also had compensation from Corporation K greater than the section 415(c)(1)(A) limit. For purposes of determining whether the plan is top-heavy for the 1991 plan year, the ten top owners will include A, B, C, D, E, F, G, H, I, and J because 10 individuals during the testing period, 1986-1990, had a greater ownership interest than these individuals.

Example 2. Assume the same facts in Example 1, except that on June 1, 1986, F, G, H, I, and J sold their interests to new owners, K, L, M, N, and O who, respectively, 30%, 30%, 30%, 5% and 5% of the value of the shares of K. Assume also that for 1988 K, L, M, N, and O owned more than the section 415(c)(1)(A) limitation. For purposes of determining whether the plan is top-heavy for the 1991 plan year, the ten top owners will include A, B, F, K, G, L, M, and C because these owners own the highest value percentages of the Corporation K stock. Since D, H, I, and J owned equal 10% interests in value, the two employees of this group who had the largest annual plan year compensation in the plan years of their ownership will be the last 2 top owners.

T-20 Q. For purposes of determining whether an employee is a key employee under section 416(H)(1)(A), what aggregation rules apply?
A. In the case of ownership percentages, each employer that would otherwise be aggregated under section 414(b), (c) and (m) is treated as a separate employer. (See section 416(b)(1)(C).) However, for purposes of determining whether an individual has compensation of $50,000, or whether an individual is a key employee by reason of being an officer or a top ten owner, compensation from each entity required to be aggregated under sections 414(b), (c) and (m) is taken into account. These rules may be illustrated by the following example:

Example. An individual owns two percent of the value of a professional corporation, which in turn owns a 40% of 1% percent interest in a partnership. The entities must be aggregated in accordance with section 414(m). The individual performs services for the corporation and for the partnership. The individual receives compensation of $125,000 from the professional corporation and $28,000 from the partnership. The individual is considered to be a key employee with respect to the employer that comprises both the professional corporation and the partnership because he has a two percent interest in the professional corporation and because his combined compensation from both the professional corporations and the partnership is more than $150,000.

T-21 Q. For purposes of testing whether an individual has compensation of more than $150,000, what definition of compensation must be used?
A. The definition of compensation to be used is the definition in § 1.415-2(d). In the case of an individual, including a self-employed individual, § 1.415-2(d)(2)(i) excludes from compensation amounts contributed to a plan of deferred compensation. Alternatively, compensation that would be stated on an employee's Form W-2 for the calendar year that ends with or within the plan year may be used. A plan must use the same definition of compensation for all top-heavy purposes for which the definition in this Question and Answer must be used.

T-22 Q. In the case of an employer who maintains a single plan, when must the determination whether the plan is top-heavy be made?
A. Whether a plan is top-heavy for a particular plan year is determined as of the determination date for such plan year. The determination date with respect to a plan year is defined in section 416(g)(4)(C) as (1) the last day of the preceding plan year, or (2) in the case of the first plan year, the last day of such plan year. Distribution made and the present value of accrued benefits are generally determined as of the determination date. (See Questions and Answers T-24 and T-25 for more specific rules.)

T-23 Q. In the case of an aggregation group, when must the determination whether the group is top-heavy be made?
A. When two or more plans constitute an aggregation group in accordance with section 416(g)(2), the following procedures are used to determine whether the plans are top-heavy for a particular plan year. First, the present value of the accrued benefits (including distributions for key employees and all employees) is determined separately for each plan as of each plan's determination date. The plans are then aggregated by adding together the results for each plan as of the determination dates for such plans that fall within the same calendar year. The combined results will indicate whether or not the plans so aggregated are top-heavy. These rules may be illustrated by the following example:

Example. An employer maintains Plan A and Plan B, each containing a key employee. Plan A's plan year commences July 1 and ends June 30. Plan B's plan year is the calendar year. For Plan A's plan year commencing July 1, 1984, the determination date is June 30, 1984. For Plan B's plan year in 1985, the determination date is December 31, 1984. These plans are required to be aggregated. For each of these plans as of their respective determination dates, the present value of the accrued benefits for key employees and all employees are separately determined. The two determination dates, June 30, 1984, and December 31, 1984, fall within the same calendar year. Accordingly, the present values of accrued benefits as of each of these determination dates are combined for purposes of determining whether the group is top-heavy. If, after combining the two present values, the total results show that the group is top-heavy, Plan A will be top-heavy for the plan year commencing July 1, 1984, and Plan B will be top-heavy for the 1985 calendar year.

T-24 Q. How is the present value of an accrued benefit determined in a defined contribution plan?
A. The present value of accrued benefits as of the determination date for any individual is the sum of (a) the account balance as of the most recent valuation date occurring within a 12-month period ending on the determination date, and (b) an adjustment for contributions due as of the determination date. In the case of a plan not subject to the minimum funding requirements of section 412, the adjustment in (b) is generally the amount of any contributions actually made after the valuation date but on or before the determination date. However, in the first plan year of the plan, the adjustment in (b) should also reflect the amount of any contributions made after the determination date that are allocated as of a date in that first plan year. In the case of a plan that is subject to the minimum funding requirements, the account balance in (a) should include contributions that would be allocated as of a date not later than the determination date, even though those amounts are not yet required to be contributed. Thus, the account balance will include contributions waived in prior years as reflected in the adjusted account balance and contributions not paid that resulted in a funding deficiency. The adjusted account balance is described in Rev. Rul. 78-223, 1978-1 C.B. 125. Also, the adjustment in (b) should reflect the amount of any contribution actually made (or due to be made) after the valuation date but before the expiration of the extended payment period in section 412(c)(10).

T-25 Q. How is the present value of an accrued benefit determined in a defined benefit plan?
A. The present value of an accrued benefit as of a determination date must be determined as of the most recent valuation date which is within a 12-month period ending on the determination date. In the first plan year of a plan, the accrued benefit for a current employee must be determined either (i) as if the individual terminated service as of the determination date or (ii) as if the individual terminated service as of the valuation date, but taking into account the estimated accrued benefit as of the determination date. For the second plan year of a plan, the accrued benefit taken into account for a current participant must not be less than the accrued benefit taken into account for the first plan year unless the difference is attributable to using an estimate of the accrued benefit as of the determination date for the first plan year and using the actual accrued benefit as of the determination date for the second plan year. For any other plan year, the accrued benefit for a current employee must be determined as if the individual terminated service as of such valuation date. For this purpose, the valuation date must be the same valuation date for computing plan costs for minimum funding, regardless of whether a valuation is performed that year.

T-26. Q. What actuarial assumptions are used for determining the present value of accrued benefits for defined benefit plans?

A. (a) There are no specific prescribed actuarial assumptions that must be used for determining the present value of accrued benefits. The assumptions used must be reasonable and need not relate to the actual plan and investment experience. The assumptions need not be the same as those used for minimum funding purposes or for purposes of determining the actuarial equivalence of optional benefits under the plan. The accrued benefit for each current employee is computed as if the employee voluntarily terminated service as of the valuation date. The present value must be computed using an interest and a post-retirement mortality assumption. Pre-retirement mortality and future increases in cost of living (but not in the maximum dollar amount permitted by section 415) may also be assumed. However, assumptions as to future withdrawals or future salary increases may not be used. In the case of a plan providing a qualified joint and survivor annuity within the meaning of section 401(a)(11) as a normal form of benefit, for purposes of determining the present value of the accrued benefit, the spouse of the participant may be assumed to be the same age as the participant.

(b) Except in the case where the plan provides for a nonproportional subsidy, the present value should reflect a benefit payable commencing at normal retirement age (or attained age, if later). Thus, benefits not relating to retirement benefits, such as pre-retirement death and disability benefits and post-retirement medical benefits, must not be taken into account. Further, subsidized early retirement benefits and subsidized benefit options must not be taken into account unless they are nonproportional subsidies. See Question and Answer T-27.

(c) Where the plan provides for a nonproportional subsidy, the benefit should be assumed to commence at the age at which the benefit is most valuable. In the case of two or more defined benefit plans which are being tested for determining whether an aggregation group is top-heavy, the actuarial assumptions used for all plans within the group must be the same. Any assumptions which reflect a reasonable mortality experience and an interest rate not less than five percent or greater than six percent will be considered reasonable. Plans, however, are not required to use an interest rate in this range.

T-27. Q. In determining the present value of accrued benefits in a defined benefit plan, what standards are applied toward determining whether a subsidy is nonproportional?

A. A subsidy is nonproportional unless the subsidy applies to a group of employees that would independently satisfy the requirements of section 410(b). If two or more plans are considered as a unit for comparability purposes under § 1.410(b)-1(d)(2), subsidies may be necessary in both plans or else the subsidy may be nonproportional. Thus, for example, in the case of a plan which provides an early retirement benefit after age 55 and 20 years of service equal to the normal retirement benefit without actuarial reduction and if the employees who may conceivably reach age 55 with 20 years of service would, as a group, satisfy the requirements of section 410(b), that subsidy is proportional. However, in contrast, consider a plan that provides an early retirement benefit that is the actuarial equivalent of the normal retirement benefit. In determining the early retirement benefit, the plan imposes the section 415 limits only on the early retirement benefit (not on the normal retirement benefit before applying the early retirement reduction factors). In such a plan, a participant with a normal retirement benefit (before limitation by section 415) in excess of the section 415 limits will receive a subsidized early retirement benefit, whereas a participant with a lower normal retirement benefit will not. Thus, such benefit would be a nonproportional subsidy if the group of individuals who are limited by the limitations under section 415 do not, by themselves, constitute a cross section of employees that could satisfy section 410(b).

T-28. Q. For purposes of determining the present value of accrued benefits in either a defined benefit or defined contribution plan, are the accrued benefits attributable to employee contributions considered to be part of the accrued benefits?

A. The accrued benefits attributable to employee contributions are considered to be part of the accrued benefits without regard to whether such contributions are mandatory or voluntary. However, the amounts attributable to deductible employee contributions (as defined in section 72(o)(9)(A)) are not considered to be part of the accrued benefits.

T-29. How are plans described in section 401(k) treated for purposes of the top-heavy rules?

A. No special top-heavy rules are provided for plans described in section 401(k), except a transitional rule. For plan years beginning after December 31, 1984, amounts which an employee elects to defer are treated as employer contributions for purposes of determining minimum required contributions under section 416(c)(3). However, for plan years beginning prior to January 1, 1985, amounts which an employee elects to have contributed to a plan described in section 401(k) are not treated as employer contributions for these purposes. A plan described in section 401(k) which is top-heavy must provide minimum contributions by the employer and limit the amount of compensation which can be taken into account in providing benefits under the plan.

T-30. What distributions are added to the present value of accrued benefits in determining whether a plan is top-heavy for a particular plan year?

A. Under section 415(g)(3)(A), distributions made within the plan year that includes the determination date and within the four preceding plan years are added to the present value of accrued benefits of key employees and non-key employees in testing for top-heaviness. However, in the case of distributions made after the valuation date and prior to the determination date, such
distributions are not included as distributions in section 416(g)(3)(A) to the extent that such distributions are included in the present value of the accrued benefits as of the valuation date. In the case of the distribution of an annuity contract, the amount of such distribution is deemed to be the current actuarial value of the contract, determined on the date of the distribution. Certain distributions that are rolled over by the employee are not included as distributions. See Question and Answer T-32. A distribution will not fail to be considered in determining the present value of the accrued benefits merely because it was made before the effective date of section 416. For purposes of this question and answer, distributions mean all distributions made during and before the plan year. In the case of the distribution of an included in the present value of the accrued benefits if such distribution is deemed to be the current actuarial value of the contract, determined on the date of the distribution. Certain distributions that are rolled over by the employee are not included as distributions. See Question and Answer T-32. A distribution will not fail to be considered in determining the present value of the accrued benefits merely because it was made before the effective date of section 416. For purposes of this question and answer, distributions mean all distributions made during and before the plan year.

T-33 Q. How are the aggregate limits under section 415(e) affected by the distributions described in section 416(g)(3)?

A. Section 415(h) modifies the aggregate limits in section 415(e) for super top-heavy plans and for top-heavy plans that are not super top-heavy but do not provide for an additional minimum contribution or benefit. A plan is a super top-heavy plan if the present value of accrued benefits for key employees exceeds 90% of the present value of the accrued benefits existing immediately prior to death. The distribution from a defined contribution plan (including the cash value of life insurance policies) of a participant's account balance on account of death will be treated as a distribution for purposes of section 416(g)(3).

T-34 Q. May plans be permissively aggregated to avoid being super top-heavy?

A. Yes, plans may be permissively aggregated to avoid being super top-heavy.

T-35 Q. What provisions must be contained in a plan to comply with the top-heavy requirements?

A. Section 401(a)(10)(B) provides that a plan will qualify only if it contains provisions which will take effect if the plan becomes top-heavy and which meet the requirements of section 416. See Questions and Answers T-39 and T-40 for rules on what provisions must be included. Under section 401(a)(10)(B)(ii), regulations may waive this requirement for some plans. See Question and Answer T-38 for a description of plans that need not include such provisions.

T-36 Q. For an employer who has no employees who has participated or is eligible to participate in both a defined benefit plan and a defined contribution plan until the combined fraction satisfies the rules of section 416(e) using the 1.0 factor for that individual. The rules contained in this Question and Answer apply for each limitation year that contains any portion of a plan year for which the plan is more.

Example. A corporation maintains a profit-sharing plan and a defined benefit plan, and these plans constitute a required aggregation group. Both plans use the calendar year for the plan year and the limitation year under section 415. The plans were determined to be top-heavy for plan year 1983. The plans use the 1.25 factor under section 415(o), and non-key employees covered by both the profit-sharing and the defined benefit plans were, in the case of a top-heavy aggregation group, the test is applied to all plans in the group as a whole. These present values are computed using the same rules as are used for determining whether the plan is top-heavy. In the case of a super top-heavy plan, the contribution plan until the combined fraction satisfies the rules of section 416(e) using the 1.0 factor for that individual. The rules contained in this Question and Answer apply for each limitation year that contains any portion of a plan year for which the plan is top-heavy. This Question and Answer may be illustrated by the following example:

Example. A corporation maintains a profit-sharing plan and a defined benefit plan, and these plans constitute a required aggregation group. Both plans use the calendar year for the plan year and the limitation year under section 415. The plans were determined to be top-heavy for plan year 1983. The plans use the 1.25 factor under section 415(o), and non-key employees covered by both the profit-sharing and the defined benefit plans were, in the case of a top-heavy aggregation group, the test is applied to all plans in the group as a whole. These present values are computed using the same rules as are used for determining whether the plan is top-heavy. In the case of a super top-heavy plan, the contribution plan until the combined fraction satisfies the rules of section 416(e) using the 1.0 factor for that individual. The rules contained in this Question and Answer apply for each limitation year that contains any portion of a plan year for which the plan is top-heavy. This Question and Answer may be illustrated by the following example:

Example. A corporation maintains a profit-sharing plan and a defined benefit plan, and these plans constitute a required aggregation group. Both plans use the calendar year for the plan year and the limitation year under section 415. The plans were determined to be top-heavy for plan year 1983. The plans use the 1.25 factor under section 415(o), and non-key employees covered by both the profit-sharing and the defined benefit plans were, in the case of a top-heavy aggregation group, the test is applied to all plans in the group as a whole. These present values are computed using the same rules as are used for determining whether the plan is top-heavy. In the case of a super top-heavy plan, the contribution plan until the combined fraction satisfies the rules of section 416(e) using the 1.0 factor for that individual. The rules contained in this Question and Answer apply for each limitation year that contains any portion of a plan year for which the plan is top-heavy. This Question and Answer may be illustrated by the following example:
contribution plan) need not include provisions describing the defined benefit or defined contribution fractions for purposes of determining whether the plan is top-heavy, or to change any plan provisions if the plan becomes super top-heavy. Furthermore, if the plan contains a single benefit structure that satisfies the requirements of section 416(b), (c), and (d) for each plan year without regard to whether the plan is top-heavy for such year, the plan need not include separate provisions to determine whether the plan is top-heavy or that apply if the plan is top-heavy. If the plan's single benefit structure does not assure that section 416(b), (c), and (d) will be satisfied in all cases, then the plan must include three types of provisions.

(b) First, the plan must contain provisions describing how to determine whether the plan is top-heavy. These provisions must include (1) the criteria for determining which employees are key employees (or non-key employees), (2) in the case of a defined benefit plan, the actuarial assumptions and benefits considered in determining the present value of accrued benefits, (3) a description of how the top-heavy ratio is computed, (4) a description of what plans (or types of plans) will be aggregated in testing whether the plan is top-heavy, and (5) a definition of the determination date and the valuation date applicable to the determination date. These determinations must be based on standards that are uniformly and consistently applied and that satisfy the rules set forth in section 416 and these Questions and Answers. The provisions in (1) and (3) above may be incorporated in the plan by reference to the applicable sections of the Internal Revenue Code without adversely affecting the qualification of the plan. However, the plan must state the definition of compensation for purposes of determining who is a key employee. (c) Second, the plan must specifically contain the following provisions that will become effective if the plan becomes top-heavy: vesting that satisfies the minimum vesting requirements of section 416(b), benefits that will not be less than the minimum benefits set forth in section 416(c), and the compensation limitation described in section 416(d). The compensation limitation described in section 416(d) may be incorporated by reference. If a plan always meets the requirements of either section 416(b), (c) or (d), the plan need not include additional provisions to meet any such requirements.

(d) Third, the plan must include provisions insuring that any change in the plan's benefit structure (including vesting schedules) resulting from a change in the plan's top-heavy status will not violate section 411(a)(10). Thus, if a plan ceases being top-heavy, certain restrictions apply with respect to the change in the applicable vesting schedule.

T-37 Q. For an employer who maintains or has maintained both a defined benefit plan and a defined contribution plan (e.g., a simplified employee pension, "SEP") and core participants do or could participate in both types of plans, what provisions must be in the plans to comply with the top-heavy requirements?

A. No. In order to administer the plan, the plan administrator must know whether the plan is top-heavy. However, precise top-heavy ratios need not be computed every year. If, on examination, the Internal Revenue Service requests a demonstration as to whether the plan is top-heavy (or super top-heavy; see Question and Answer T-33) the employer must demonstrate to the Service's satisfaction that the plan is not operating in violation of section 401(a)(10)(B). For purposes of any demonstration, the employer may use computations that are not precisely in accordance with this section but which mathematically prove that the plan is not top-heavy. For example, if the employer determined the present value of accrued benefits for key employees in a simplified manner which overstated that value, determined the present value for non-key employees in a simplified manner which understated that value, and the ratio of the key employees present value divided by the sum of the present values was less than 60 percent, the plan would not be considered top-heavy. This would be a sufficient demonstration because the simplified fraction could be shown to be greater than the exact fraction and, thus, the exact fraction must also be less than 60 percent.

Several methods that may be used to simplify the determinations are indicated below.

(1) If the top-heavy ratio, computed considering all the key employees and only some of the non-key employees, is less than 60 percent, then it is not necessary to accumulate employee data on the remaining non-key employees. Inclusion of additional non-key employees would only further decrease the ratio.

(2) If the number of key employees is known but the identity of the key employees is not known (i.e., if the only key employees are officers and the limit on officers is applicable), the employer may be determined by using a hypothetical "worst case" basis. Thus, in the case of a defined benefit plan, if the numerator of the top-heavy ratio were determined assuming each key employee's present value of accrued benefits were equal to the maximum section 415 benefits at the age that would maximize such present value, that assumption would only overstate the present value of accrued benefits for key employees. Thus, if that ratio is less than 60 percent, the plan is not top-heavy and accurate data on the key employees need not be collected.

(3) If the employer has available present value of accrued benefit
computations for key and non-key employees in a defined benefit plan, and these values differ from those that would be produced under Question and Answer T-25 only by inclusion of a withdrawal assumption, the present value for the key employees (but not the non-key employees) may be adjusted to a "worst case" value by dividing by the lowest possible probability of not withdrawing from plan participation before normal retirement age. If the top-heavy ratio based on this inflated key employee value is less than 60 percent, the present value need not be recomputed without the withdrawal assumption. The methods set forth in this answer may also be used to determine whether a plan is super top-heavy by inserting "90%" for "60%" in the appropriate places.

T-40 Q. Will a plan fail to qualify if it provides that the $200,000 maximum amount of annual compensation taken into account under section 416(d) for any plan year that the plan is top-heavy may be automatically increased in accordance with regulations under section 410?

A. No.

T-41 Q. If a plan provides benefits based on compensation in excess of $200,000 and the plan becomes top-heavy, must any accrued benefits attributable to this excess compensation be eliminated?

A. No. For any year that a plan is top-heavy, section 416(d) provides that compensation in excess of $200,000 must not be taken into account. However, a top-heavy plan may continue to provide for any benefits attributable to compensation in excess of $200,000 to the extent such benefits were accrued before the plan was top-heavy. Furthermore, section 416(d)(6) will be violated if any individual's pre-top-heavy benefit is reduced by either (1) a plan amendment adding the $200,000 restriction, or (2) an automatic change in the plan benefits structure imposing the $200,000 restriction due to the plan's becoming top-heavy.

T-42 Q. Under a top-heavy defined benefit plan, are the requirements of section 416(d) applied if the annual compensation of an employee taken into account to determine plan benefits is limited to the amount currently described in section 416(d) for years during which the plan is top-heavy but higher compensation is taken into account for years before the plan became top-heavy?

A. No. For the top-heavy plan to meet the requirements of section 416(d), compensation for all years, including years before the plan became top-heavy, that is taken into account to determine plan benefits must not exceed the amount currently described in section 416(d). However, if the accrued benefit as of the end of the last plan year before the plan became top-heavy (ignoring any plan amendments after that date) is greater than the accrued benefit determined by limiting compensation in accordance with section 416(d), that higher accrued benefit as of the end of the last plan year before the plan became top-heavy must not be reduced. Providing such higher accrued benefit will not cause the plan to violate section 416(d).

T-43 Q. What happens to an individual who has ceased employment before a plan becomes top-heavy?

A. If an individual has ceased employment before a plan becomes top-heavy, such individual would not be required to receive any additional benefit accruals, contributions, or vesting, unless the individual returned to employment with the employer. See Questions and Answers V-3, M-4, and M-10. In addition, if the individual is receiving benefits based on annual compensation greater than $200,000, such benefits cannot be increased.

V Vesting Rules for Top-Heavy Plans

V-1 Q. What vesting must be provided under a top-heavy plan?

A. Under section 416(b), the accrued benefits attributable to employer contributions must be nonforfeitable in accordance with one of two statutory standards. Either such accrued benefits must be nonforfeitable after 3 years of service or the nonforfeitable portion of accrued benefits must be at least 20 percent after 2 years of service, 40 percent after 3 years of service, 60 percent after 4 years of service, 80 percent after 5 years of service, and 100 percent after 6 years of service. The accrued benefits attributable to employer contributions has the same meaning as under section 411(c) of the Code. As under section 411(a), the accrued benefits attributable to employee contributions must be nonforfeitable at all times.

V-2 Q. What service must be counted in determining vesting requirements?

A. All service required to be counted under section 411(a) must be counted for these purposes. All service permitted to be disregarded under section 411(a)(4) may similarly be disregarded under the schedules of section 416(b).

V-3 Q. What benefits must be subject to the minimum vesting schedule of section 416(b)?

A. All accrued benefits within the meaning of section 411(a)(7) must be subject to the minimum vesting schedule. These accrued benefits include benefits accrued before the effective date of section 416 and benefits accrued before a plan becomes top-heavy. However, when a plan becomes top-heavy, the accrued benefits of any employee who does not have an hour of service after the plan becomes top-heavy are not required to be subject to the minimum vesting schedule. Accrued benefits which have been forfeited before a plan becomes top-heavy need not vest when a plan becomes top-heavy.

V-4 Q. May a top-heavy plan provide a "minimum eligibility requirement of the later of age 21 or the completion of 3 years of service and provide that all benefits are nonforfeitable when accrued?"

A. Yes. For plan years which begin after December 31, 1984, a top-heavy plan may provide a minimum eligibility requirement of the later of age 21 or the completion of 3 years of service, and provide that all benefits are nonforfeitable when accrued. For plan years which began before January 1, 1985, "23" may be substituted for "21" in the preceding sentence.

V-5 Q. What does nonforfeitable mean?

A. In general, nonforfeitable has the same meaning as in section 411(a). However, the minimum benefits required under section 416 (to the extent required to be nonforfeitable under section 416(b)) may not be forfeited under section 411(a)(6)(B) or (D). Thus, if benefits are suspended (ceased) during a period of reemployment, the benefit payable upon the subsequent resumption of payments must be actuarially increased to reflect the nonpayment of benefits during such period of re-employment.

V-6 Q. Will a class-year plan automatically satisfy the minimum vesting requirements in section 416(b) if it provides that contributions with respect to any plan year become nonforfeitable no later than the end of the third plan year following the plan year for which the contribution was made?

A. No. Although this vesting schedule is similar to the 3-year minimum vesting schedule permitted by section 418(b)(1)(A), it does not satisfy that requirement. The 3-year vesting schedule in section 416(b)(1)(A) requires that, after completion of 3 years of service, the entire accrued benefit of a participant be nonforfeitable. Under the class-year vesting schedule described above, a portion of a participant's accrued benefit (that portion attributable to contributions for the prior 3 years)
forfeitable regardless of the participant's years of service.

V-7 Q. When a top-heavy plan ceases to be a top-heavy, may the vesting schedule be altered to a vesting schedule permitted without regard to section 416?

A. When a top-heavy plan ceases to be top-heavy, the vesting schedule may be changed to one that would otherwise be permitted. However, in changing the vesting schedule, the rules described in section 411(a)(10) apply. Thus, the nonforfeitable percentage of the accrued benefit before the plan ceased to be top-heavy must not be reduced; also, any employee with five or more years of service must be given the option of remaining under the prior (i.e., top-heavy) vesting schedule.

M. Minimum Benefits under Top-heavy Plans

M-4 Q. Which employees must receive minimum contributions or benefits in a top-heavy plan?

A. Generally, every non-key employee who is a participant in a top-heavy plan must receive minimum contributions or benefits under such plan. However, see Questions and Answers M-4 and M-10 for certain exceptions. Different minimums apply for defined benefit and defined contribution plans.

M-2 Q. What is the defined benefit minimum?

A. (a) The defined benefit minimum requires that the accrued benefit at any point in time must equal at least the product of (i) an employee's average annual compensation for the period of consecutive years (not exceeding five) when the employee had the highest aggregate compensation from the employer and (ii) the lesser of 2% per year of service with the employer or 20%.

(b) For purposes of the defined benefit minimum, years of service with the employer are generally determined under the rules of section 411(a)(6), (5) and (8). However, a plan may disregard any year of service if the plan was not top-heavy for any plan year ending during such year of service, or if the year of service was completed in a plan year beginning before January 1, 1984.

(c) In determining the average annual compensation for a period of consecutive years during which the employee had the largest aggregate compensation, years for which the employee did not earn a year of service under the rules of section 411(a)(4), (5), and (6) are to be disregarded. Thus, if an employee has received compensation from the employer during years one, two, three, and five, and for each of these years the employee earned a year of service, then the employee's average annual compensation is determined by dividing the employee's aggregate compensation for these three years by three. If the employee fails to earn a year of service in the next year, but does earn a year of service in the fifth year, the employee's average annual compensation is calculated by dividing the employee's aggregate compensation for years one, two, three, and five by four. The compensation required to be taken into account is the compensation described in Question and Answer T-21. In addition, compensation received for years ending in plan years beginning before January 1, 1984, and compensation received for years beginning after the close of the last plan year in which the plan is top-heavy may be disregarded.

(d) The defined benefit minimum is expressed as a life annuity (with no ancillary benefits) commencing at normal retirement age. Thus, if post-retirement death benefits are also provided, the 2% minimum annuity benefit may be adjusted. (See Question and Answer M-3) The 2% minimum annuity benefit may not be adjusted due to the provision of pre-retirement ancillary benefits. Normal retirement age has the same meaning as under section 411(a)(8).

(e) Any accruals of employer-derived benefits, whether or not attributable to years for which the plan is top-heavy, may be used to satisfy the defined benefit minimums. Thus, if a non-key employee had already accrued a benefit of 20 percent of final average pay at the time the plan became top-heavy, no additional minimum accruals are required (although the accrued benefit would increase as final average pay increased). Accrued benefits attributable to employee contributions must be ignored. Accrued benefits attributable to employer and employee contributions have the same meaning as under section 411(c).

M-5 Q. Would the defined benefit minimum be satisfied if the plan provides a normal retirement benefit equal to the greater of the plan's projected formula or the projected minimum benefit and if benefits accrue in accordance with the fractional rule described in section 411[b](1)[C]?

A. No. The fact that this fractional rule would not satisfy the defined benefit minimum may be illustrated by the following example. Consider a non-key employee, age 25, entering a top-heavy plan in which the projected minimum benefit for the employee is greater than the projected benefit under the normal formula. Under the fractional rule, the employee's accrued benefit ten years later at age 35 would be 5% × (10/40). Under section 416, the employee's minimum accrued benefit after ten years of service must be at the benefit commences before the normal retirement age and the employee must receive a higher benefit if the benefit commences after the normal retirement age. No specific actuarial assumptions are mandated providing different actuarial equivalents. However, the assumptions must be reasonable.
least 20%. Thus, because the 5% benefit is less than the 20% benefit required under section 416, such benefit would not satisfy the required minimum.

M-6 Q. What benefit must an employer provide in a top-heavy defined benefit employee pay-all plan?

A. The defined benefit minimum in an employee pay-all top-heavy plan is the same as that for a plan which has employer contributions. That is, the employer must provide the benefits specified in Question and Answer M-2.

M-7 Q. What is the defined contribution minimum?

A. The sum of the contributions and forfeitures allocated to the account of any non-key employee who is a participant in a top-heavy defined contribution plan must equal at least 3% of such employee’s compensation (see Question and Answer T-21 for the definition of compensation) for that plan year or for the calendar year ending within the plan year. However, a lower minimum where the largest contribution made or required to be made for key employees is less than 3%. The preceding sentence does not apply to any plan required to be included in an aggregation group if such plan enables a defined benefit plan required to be included in such group to meet the requirements of section 401(a)(4) or 410. The contribution made or required to be made on behalf of any key employee is equal to the ratio of the sum of the contributions made or required to be made and forfeitures allocated for such key employee divided by the compensation (not in excess of $200,000) for such key employee. Thus, the defined contribution minimum that must be provided for any non-key employee for a top-heavy plan year is the largest percentage of compensation (not in excess of $200,000) provided on behalf of any key employee for that plan year (if the largest percentage of compensation provided on behalf of any key employee for that plan year is less than 3%).

M-8 Q. If an employer maintains two top-heavy defined contribution plans, must both plans provide the defined contribution minimum for each non-key employee who is a participant in both plans?

A. No. If one of the plans provides the defined contribution minimum for each non-key employee who participates in both plans, the other plan need not provide an additional contribution for such employee. However, the other plan must provide the vesting required by section 419(b) and must limit compensation (based on all compensation from all aggregated employers) in providing benefits as required by section 416(d).

M-9 Q. In the case of the waiver of minimum funding standards of section 412(d), how does section 416 treat the defined contribution minimum?

A. For purposes of determining the contribution that is required to be made on behalf of a key employee, a waiver of the minimum funding requirements is disregarded. Thus, if a defined contribution plan receives a waiver of the minimum funding requirement, and if the minimum contribution required under the plan without regard to the waiver exceeds 3%, the exception described in Question and Answer M-7 does not apply even though no key employee receives a contribution in excess of 3% and even though the amount required to be contributed on behalf of the key employee has been waived. Also, a waiver of the minimum funding requirements will not alter the requirements of section 416. Thus, in the case of the top-heavy defined contribution plan in which the non-key employee must receive an allocation, a waiver of the minimum funding requirements may eliminate a funding violation and such waiver will preclude a violation under section 416 even though the required contribution is not made. However, the adjusted account balance (as described in Rev. Rul. 78-223, 1978-1 C.B. 125) of the non-key employees must reflect the required minimum contribution even though such contribution was not made.

M-10 Q. Which employees must receive the defined contribution minimum?

A. Those non-key employees who are participants in a top-heavy defined contribution plan who have not separated from service by the end of the plan year must receive the defined contribution minimum. Non-key employees who have become participants but who subsequently fail to complete 1,000 hours of service (or the equivalent) for an accrual computation period must receive the defined contribution minimum. A non-key employee who may not fail to receive a defined contribution minimum because either (1) the employee is excluded from participation (or accrues no benefit) merely because the employee’s compensation is less than a stated amount, or (2) the employee is excluded from participation (or accrues no benefit) merely because of a failure to make mandatory employee contributions or, in the case of a cash or deferred arrangement, elective contributions.

M-11 Q. May either the defined benefit minimum or the defined contribution minimum be integrated with social security?

A. No.

M-12 Q. What minimum contribution or benefit must be received by a non-key employee who participates in a top-heavy plan?

A. In the case of an employer maintaining only one plan, if such plan is a defined benefit plan, each non-key employee covered by that plan must receive the defined benefit minimum. If such plan is a defined contribution plan (including a target benefit plan), each non-key employee covered by the plan must receive the defined contribution minimum. In the case of an employer who maintains more than one plan, employees covered under only the defined benefit plan must receive the defined benefit minimum. Employees covered under only the defined contribution plan must receive the defined contribution minimum. In the case of employees covered under both defined benefit and defined contribution plans, the rules are more complicated. Section 416(f) precludes, in the case of employees covered under both defined benefit and defined contribution plans, either required duplication or inappropriate omission. Therefore, such employees need not receive both the defined benefit and the defined contribution minimum.

There are four safe harbor rules a plan may use in determining which minimum must be provided to a non-key employee who is covered by both defined benefit and defined contribution plans. Since the defined benefit minimums are generally more valuable, if each employee covered under both a top-heavy defined benefit plan and a top-heavy defined contribution plan receives the defined benefit minimum, the defined benefit and defined contribution minimums will be satisfied. Another approach that may be used is a floor offset approach (see Rev. Rul. 78-259, 1978-2 C.B. 111) under which the defined benefit minimum is provided in the defined benefit plan and is offset by the benefits provided under the defined contribution plan. Another approach that may be used in the case of employees covered under both defined benefit and defined contribution plans is to prove, using a comparability analysis (see Rev. Rul. 81-203, 1981-2 C.B. 93) that the plans are providing benefits at least equal to the defined benefit minimum. Finally, in order to provide a defined benefit minimum alone, the complexity of a floor offset plan and the annual fluctuation of a comparability analysis, a safe haven minimum defined...
profits out of which to make members of a required aggregation plan. Both plans are top-heavy and are
minimums.

M-16 Q. Will target benefit plans be treated as defined benefit or defined contribution plans for purposes of the top-heavy rules?
A. Target benefit plans will be treated as defined contribution plans; for purposes of the top-heavy rules.

M-17 Q. Can a plan described in section 412(i) [funded exclusively by level premium insurance contracts] also satisfy the minimum benefit requirements of section 410?
A. The accrued benefits provided for a non-key employee under most level premium insurance contracts might not provide a benefit satisfying the defined benefit minimum because of the lower cash values in early years under most level premium insurance contracts, and because such contracts normally provide for level premiums until normal retirement age. However, a plan will not be considered to violate the requirements of section 412(i) merely because it funds certain benefits through either an auxiliary fund or deferred annuity contracts, if the following conditions are met:
(1) The target benefit at normal retirement age (funded by the level premium insurance contract) is determined, taking into account the defined benefit minimum that would be required assuming the current top-heavy (or non top-heavy) status of the plan continues until normal retirement age; and
(2) The benefits provided by the auxiliary fund or deferred annuity contracts do not exceed the excess of the defined benefit minimum benefits over the benefits provided by the level premium insurance contract.

If the above conditions are satisfied, then the plan is still exempt from the minimum funding requirements under section 412 and may still utilize the special accrued benefit rule in section 412(b)(1)(F) subject to the following modifications: Although the portion of the plan funded by the level premium annuity contract is exempt from the minimum funding requirements, the portion funded by an auxiliary fund is subject to those requirements. (Thus, a funding standard account must be maintained and a Schedule B must be filed with the annual report.) The accrued benefit for any participant may be determined using the rule in section 412(b)(1)(F) but must not be less than the defined benefit minimum.

This Treasury decision is issued under the authority contained in section 7835 of the Internal Revenue Code of 1954 (63 A Stat. 917; 26 U.S.C. 7835).
Ron I. London,
Assistant Secretary of the Treasury.
Approved: December 31, 1984.

Ronald A. Peckman,
Acting Assistant Secretary of the Treasury.
[FD Doc. 84-33415 Filed 12-27-84; 4:35 am]

SUMMARY: This document provides temporary regulations relating to deductions in excess of $5,000 claimed for charitable contributions of property and to information returns by donees who make certain dispositions of donated property. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notices of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: The regulations apply to certain charitable contributions of property made after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224

ATTENTION: CCLR/LIT (202-555-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background:

This document contains temporary Income Tax Regulations under the Tax Reform Act of 1984 (Pub. L. 93-369, 83 Stat. 494). They are necessary to implement section 155(a) of that Act, which directed that regulations be issued relating to the substantiation of deductions claimed by an individual, closely held corporation, or personal service corporation for charitable contributions of certain property made after December 31, 1984.
Section 155(b) of the Tax Reform Act added section 6050L to the Code regarding information returns that must be filed by donees who make certain dispositions of donated property. This document also contains temporary regulations implementing that section of the Act.


These temporary regulations supplement the regulations contained in § 1.170A–13, and, therefore, the regulations under § 1.170A–13 should be read in conjunction with these temporary regulations.

Substantiation Requirements for the Deductibility of Certain Charitable Contributions

The temporary regulations provide that, pursuant to section 170(a)(1) of the Code, a deduction for certain charitable contributions made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation shall not be allowed unless the donor complies with certain substantiation requirements. These requirements apply to contributions of property (other than money and publicly traded securities) if the aggregate claimed or reported value of such item of property (and all similar items of property for which deductions for charitable contributions are claimed or reported by the same donor for the same taxable year whether or not donated to the same donee) is in excess of $5,000.

For such a contribution the donor must obtain a qualified appraisal and attach an appraisal summary to the return on which the contribution of property is claimed or reported. The temporary regulations set forth the information that must be included in the appraisal summary. A separate appraisal summary for each item of contributed property must be attached to the return on which a deduction with respect to the appraised property is first claimed or reported. The temporary regulations set forth the information that must be included in the appraisal summary.

Qualified Appraiser

A qualified appraiser is an appraisal document that (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the contributed property, (2) is prepared, signed, and dated by a qualified appraiser (or appraisers), and (3) does not involve a prohibited type of appraisal fee. The temporary regulations set forth the information that must be included in the qualified appraisal. It must be received by the donor before the due date (including extensions) of the return on which the deduction for the contributed property is first claimed or, in the case of a deduction first claimed on an amended return, the date on which the return is filed.

A separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year, provided the appraisal includes all the required information for each item. However, the appraiser may select any items whose aggregate value is appraised at $100 or less for which a group description rather than a specific description of each item will suffice.

Appraisal Summary

The appraisal summary must be made on the form prescribed by the Internal Revenue Service, signed and dated by the donee and qualified appraiser (or appraisers), and attached to the donor's return on which a deduction with respect to the appraised property is first claimed or reported. The temporary regulations set forth the information that must be included in the appraisal summary.

A separate appraisal summary for each item of contributed property must be attached to the return on which the property is contributed. If, however, similar items of property are contributed to the same donee, a single appraisal summary may be attached with respect to all similar items of property contributed to the same donee provided that the appraisal summary includes all the required information with respect to each item. However, the appraiser may select any items whose aggregate value is appraised at $100 or less for which a group description will suffice. A donor who contributes similar items of property to more than one donee must attach a separate appraisal summary for each donee.

If the donor is a partnership or S corporation, the donor must provide a copy of the appraisal summary to every partner or shareholder who receives an allocation of a deduction for a charitable contribution of property described in the appraisal summary. The partner or shareholder must attach the appraisal summary to the partner's or shareholder's return. If, a donor (or partner or shareholder) fails to attach an appraisal summary to the return, a charitable deduction will not be disallowed if the donor (or partner or shareholder) submits an appraisal summary within 60 days of being requested to do so by the Internal Revenue Service, provided that the failure to attach an appraisal summary was a good faith omission.

Qualified Appraiser

The definition of the term "qualified appraiser" is critically important because a donor who fails to use such an appraiser will not be entitled to a deduction with respect to a charitable contribution of property valued in excess of $5,000. Section 155 of the Act left the definition of the term qualified appraiser largely to these regulations.

Various appraisers and appraisal groups have urged in written statements (filed in response to the request for public comments published in the Federal Register) that the definition of the term qualified appraiser should ensure that only individuals with high professional standards be permitted to prepare qualified appraisals. One of these groups, for example, recommended that the definition of the term qualified appraiser be phrased as follows:

A qualified appraiser being one who has completed a rigid program of education, testing, and certification through a recognized professional appraisal organization which self-regulates its members.

Other commentators recommended that a designation by one of several specified professionals appraisal associations should establish conclusively that a person is a qualified appraiser. Several commentators suggested that the Internal Revenue Service establish a roll of qualified appraisers that would be filled through an examination or application process.

While the interest of appraisal groups (and the Internal Revenue Service) in ensuring that only truly qualified persons be permitted to prepare qualified appraisals is strong, other competing interests also exist. In particular, donors and donees have an interest in assuring that the definition of qualified appraiser provides reasonable certainty and objectivity to persons who contemplate a charitable contribution of property expected to be valued in excess of $5,000. As stated in a comment filed by a group representing potential
donees, "if donors cannot select appraisers and obtain appraisals with reasonable certainty as to qualification, certain kinds of charitable support may be seriously affected."

After careful consideration of the recommendations received and concerns expressed, the regulations define a qualified appraiser as an individual who includes on the appraisal summary a declaration that:

(A) The individual holds himself or herself out to the public as an appraiser;

(B) Because of the appraiser's qualifications as described in the appraisal, the appraiser is qualified to make appraisals of the type of property the donor is seeking to dispose of...

(C) The appraiser understands that a false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and consequently the appraiser may have appraisals disregarded pursuant to 31 U.S.C. 330 (c).

Even if the individual complies with the requirements described above, the individual is not a qualified appraiser if the donor had knowledge of facts which would cause a reasonable person to expect the appraiser to falsely overstate the value of the donated property.

In no case is an appraiser a qualified appraiser if the donor, taxpayer, donee, or other person identified in paragraph (c)(2)(iv) of §1.170A-13T.

More than one appraiser may appraise the donated property provided that each appraiser complies with the requirements of this Treasury decision, including signing the qualified appraisal and appraisal summary.

Appraisal Fee

Generally, no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement is based in whole or in part on the amount of the appraised value of the property, any tax is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. This provision does not apply in certain circumstances to appraisal fees paid to a generally recognized association that regulates appraisers.

Information Return by Donees

The temporary regulations provide that the donee of any charitable deduction property who sells, exchanges, or otherwise disposes of the property within 2 years after receipt of the property must make an information return.

Charitable deduction property is defined as any property (other than money or publicly traded securities) contributed after December 31, 1934, with respect to which a donee signs an appraisal summary. A copy of the donee information return must be provided to the donor of the property and retained by the donee.

Under these temporary regulations, a donee that receives a charitable contribution valued in excess of $5,000 from a corporation generally does not have to file a donee information return because an appraisal summary is not required with respect to such a contribution. Section 6701L; however, by its terms applies to such contributions. The Internal Revenue Service is studying the application of section 6701L to such contributions and would appreciate comment on this issue.

Consideration is being given to requiring corporations to obtain donee signatures on appraisal summaries (but not requiring appraisals) as is required under these regulations for contributions of nonpublicly traded stock valued over $5,000 but not over $10,000. An alternative also under consideration is requiring donees to file information returns with regard to any contributed property that they dispose of within 2 years of receipt for over $5,000 or for which they have signed an appraisal summary.

Regulatory Flexibility Act: Executive Order 12291, and Paperwork Reduction Act of 1980

No general notice of proposed rulemaking is required by U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. A Regulatory Impact Analysis has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Beverly A. Baughman 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, both on matters of substance and style.

List of Subjects

26 CFR 1.6701T through 1.6701-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.670A-1 through 1.670A-3

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.170A-13 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

(b) Charitable contributions of property other than money made in taxable years beginning after December 31, 1932—(i) In general. See paragraph (b)(1) of §1.170A-13T.

For line 2, a new §1.170A-13T is added immediately following §1.170A-13 to read as follows:

§ 1.170A-13T Temporary regulations; recordkeeping and return requirements for deductions for charitable contributions (temporary).

(a) [Reserved]

(b) Charitable contributions of property other than money made in taxable years beginning after December 31, 1932—(1) In general. Except in the case of certain charitable contributions of property made after December 31, 1932, the requirements of this section apply to any contribution that makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1932, shall maintain for each contribution a copy of the donee charitable organization showing the following information:

(i) The name of the donee;

(ii) The date and location of the contribution; and

(iii) A description of the property in detail reasonably sufficient under the
circumstances (including the value of the property). A letter or other written communication from the donee charitable organization acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (e.g., by depositing property at a charity’s unattended drop site). In all cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of § 1.170A-13.

(c) Deductions in excess of $5,000 for certain charitable contributions of property made after December 31, 1984—(1) In general. This paragraph applies to any charitable contribution made after December 31, 1984, by an individual, closely held corporation, partnership, or S corporation of an item of property (other than money or publicly traded securities) the claimed value of which exceeds $5,000. In the case of nonpublicly traded stock, the claimed value of which does not exceed $10,000 but is greater than $5,000, a donor must—
(A) Attach a partially completed appraisal summary form (as described in paragraph (c)(4)(iv)(A) of this section) to the tax or information return specified in paragraph (c)(2)(i)(B) of this section; and
(B) Maintain records containing the information required by paragraph (b)(2)(ii) of § 1.170A-13.

(2) Substantiation requirements. (i) In general. Except as provided in paragraph (c)(5)(ii) of this section, a donor who claims or reports a deduction for charitable contributions under section 170 is allowed unless the substantiation requirements described in paragraph (c)(2) of this section are met. For purposes of this paragraph (c), the claimed value of an item of property is the aggregate claimed or reported value of such item of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) for which deductions for charitable contributions under section 170 are claimed or reported by the same donor for the same taxable year (whether or not donated to the same donee).

(ii) Information included in qualified appraisal. A qualified appraisal shall include the following information:
(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;
(B) In the case of tangible property, the physical condition of the property;
(C) The date (or expected date) of contribution to the donee;
(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor which relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding which—
(1) Restricts temporarily or permanently the donee’s right to use or dispose of the donated property;
(2) Reserves to, or confers upon, anyone other than the donee organization or an organization participating with the donee organization in cooperative fund-raising any right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to remove the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or
(3) Earmarks donated property for a particular use;
(E) The name, address, and taxpayer identification number (employer identification number) of the qualified appraiser (or appraisers) and, if the qualified appraiser (or appraisers) is a partner in a partnership, an employee of any person (whether an individual, corporation, or partnership), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (employer identification number) of the person who employs or engages the qualified appraiser (or appraisers);
(F) The qualifications of the qualified appraiser (or appraisers) who signs the appraisal, including the appraiser’s background, experience, education, and membership, if any, in professional appraisal associations;
(G) A statement that the appraisal was prepared for income tax purposes;
(H) The date (or dates) on which the property was valued;
(I) The appraised fair market value of the property on the date (or expected date) of contribution;
(J) The method of valuation used to determine the fair market value, such as the income approach, the market data approach, or the replacement-cost-less-depreciation approach;
(K) The specific basis for the valuation, if any, such as any specific comparable sales transactions; and
(L) A description of the fee arrangement between the donor and appraiser.

(iii) Effect of signature of the qualified appraiser. Any appraiser (or appraisers) who falsely or fraudulently overstates the value of the property described in a qualified appraisal or appraisal summary (as defined in paragraph (c)(4) of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and consequently may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(iv) Special rules—(A) Number of qualified appraisals. For purposes of paragraph (c)(2)(i)(A) of this section, a separate qualified appraisal is required for each item of property which is not included in a group of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year if the donor, although a donor may obtain separate qualified appraisals for each item of property. A
qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less for which a group description will suffice. See paragraphs (c)(7)(ii) of this section for the definition of similar items of property.

(B) Time of receipt of qualified appraisal. The qualified appraisal must be received by the donee before the due date (including extensions) of the return on which a deduction is first claimed under section 170 with respect to the donated property, or, in the case of a deduction first claimed on an amended return, the date on which the return is filed.

(C) Retention of qualified appraisal. The donor must retain the qualified appraisal in the donor's records for so long as it may be relevant in the administration of any internal revenue law.

(D) Appraisal disregarded pursuant to 31 U.S.C. 330(c). For purposes of this paragraph (c), an appraisal shall not be a qualified appraisal if the appraisal is disregarded pursuant to 31 U.S.C. 330(c), unless the appraisal summary related to the appraisal includes a declaration as described in paragraph (c)(4)(ii)(K)(2) of this section.

(4) Appraisal summary—(i) In general. For purposes of this paragraph (c), except as provided in paragraph (c)(4)(iv)(A) of this section, the term "appraisal summary" means a summary of a qualified appraisal that—

(A) Is made on the form prescribed by the Internal Revenue Service;

(B) Is signed and dated by the donee (as described in paragraph (c)(4)(ii) of this section);

(C) Is signed and dated by the qualified appraiser (within the meaning of paragraph (c)(5) of this section) who prepared the qualified appraisal (within the meaning of paragraph (c)(9) of this section); and

(D) Includes the information required by paragraph (c)(4)(ii) of this section.

(ii) Information included in an appraisal summary. An appraisal summary shall include the following information:

(A) Name and taxpayer identification number of the donor (in the case of a partnership, or S corporation);

(B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;

(C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;

(D) The number of acquisition (e.g., purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, a statement to that effect and the approximate date the property was substantially completed;

(E) The cost or other basis of the property adjusted as provided by section 1016;

(F) The same, address, and taxpayer identification number of the donee;

(G) The date the donee received the property;

(H) The name, address, and taxpayer identification number of the qualified appraiser (or appraisers) who signs the appraisal summary and of other persons as required by paragraph (c)(4)(ii)(E) of this section;

(I) The appraised fair market value of the property on the date of contribution;

(J) The declaration by the appraiser described in paragraph (c)(4)(ii)(K) of this section;

(K) A declaration by the appraiser stating that—

(1) The fee charged for the appraisal is not of a type prohibited by paragraph (c)(6) of this section; and

(2) Appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. 330(c) on the date the appraisal summary is signed by the appraiser; and

(L) Such other information as may be specified by the forms or its instructions.

(iii) Signature of the donee. The person who signs the appraisal summary for the donee shall be an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign appraisal summaries by an official authorized to sign the tax or information returns of the donee. The signature of the donee does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary for the date specified in the appraisal summary and that the donee understands the information reporting requirements imposed by section 6050L and § 6050L-17. In general, section 6050L requires the donee to file an information return with the Internal Revenue Service in the event the donee sells, exchanges, or otherwise disposes of the property (or any portion thereof) described in the appraisal summary within 2 years after the date of receipt of the property.

(iv) Special rules—(A) Contents of appraisal summary required in the case of certain contributions of publicly traded stock. With respect to publicly traded stock described in paragraph (c)(4)(ii) of this section, the term "appraisal summary" means a document that complies with the requirements of paragraph (c)(4)(ii) (A) and (E) of this section and includes the claimed or reported fair market value of the stock and the information required by paragraph (c)(4)(ii) (A), (B), and (D) through (G) of this section.

(B) Number of appraisal summaries. A separate appraisal summary for each item of property described in paragraph (c)(4) of this section must be attached to the donor's return. If, during the donor's taxable year, the donor contributes similar items of property described in paragraph (c)(1) of this section to more than one donee, the donor shall attach to the donor's return a separate appraisal summary for each donee. If, however, during the donor's taxable year, a donor contributes similar items of property to the same donee, the donor may attach to the donor's return a single appraisal summary with respect to all similar items of property contributed to the same donee. Such an appraisal summary shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less for which a group description will suffice. See paragraph (c)(7)(ii) of this section for the definition of similar items of property.

(C) Manner of acquisition and cost basis information. If a taxpayer has reasonable cause for being unable to provide the information required by paragraph (c)(4)(ii) (D) and (E) of this section, an appropriate explanation should be attached to the appraisal summary. The taxpayer's declaration will not be disallowed simply because of the inability (for reasonable cause) to provide these items of information.

(D) Information excluded from certain appraisal summaries. The information required by paragraph (c)(4)(ii) (D), (E), and (H) through (J) of this section does not have to be included on the appraisal summary at the time it is signed by the donee.

(E) Appraisal summary required to be provided to partners and shareholders. If the donee is a partnership or S
corporation, the donor shall provide a copy of the appraisal summary to every partner or shareholder, respectively, who receives an allocation of a charitable contribution deduction under section 170 with respect to the property described in the appraisal summary.

(E) Partners and S corporation shareholders. A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which this paragraph (c) applies must attach a copy of the partnership's or S corporation's appraisal summary to the tax return on which the deduction for the contribution is first claimed. If such appraisal summary is not attached, the partner's or shareholder's deduction shall not be allowed except as provided for in paragraph (c)(4)(iv)(C) of this section.

(C) Failure to attach appraisal summary. In the event that a donor fails to attach the donor's return an appraisal summary required by paragraph (c)(2)(i)(B) or (ii)(A) of this section, the Internal Revenue Service may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction under section 170 shall not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission.

(5) Qualified appraiser. The term "qualified appraiser" means an individual (other than a person described in paragraph (c)(5)(iv) of this section) who includes on the appraisal summary specified in paragraph (c)(4) of this section, a declaration that—

(A) The individual holds himself or herself out to the public as an appraiser;

(B) Because of the appraiser's qualifications as described in the appraisal (pursuant to paragraph (c)(3)(ii)(F)), the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons described in paragraph (c)(5)(iv) of this section; and

(D) The appraiser understands that a false or fraudulent overstated value of the property described in the qualified appraisal or appraisal summary subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and consequently the appraiser may have appraisals disregarded pursuant to 31 U.S.C. 330(c) [see paragraph (c)(3)(iii) of this section].

(ii) Exception. An individual is not a qualified appraiser with respect to a particular donation, even if the declaration specified in paragraph (c)(5)(i) of this section is provided in the appraisal summary, if the donor had knowledge of facts which would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property (e.g., where an agreement is made between the donor and the appraiser concerning the amount at which the property would be valued and such amount exceeds the fair market value of the property).

(iii) Numbers of appraisers. More than one appraiser may appraise the donated property, provided that each appraiser complies with the requirements of this paragraph (c), including signing the qualified appraisal and appraisal summary as required by paragraph (c)(3)(i)(B) and (4)(i)(B) of this section, respectively.

(iv) Qualified appraiser exclusions. The following persons cannot be qualified appraisers with respect to particular property:

(A) The donor or the taxpayer who claims or reports a deduction under section 170 for the contribution of the property that is being appraised.

(B) A party to the transaction in which the donor acquired the property being appraised (i.e., the person who sold, exchanged, or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange, or gift), unless the property is donated within 2 months of the date of acquisition and its appraisal value does not exceed its acquisition price.

(C) The donee of the property.

(D) Any person employed by any of the foregoing persons under section 170 of the Internal Revenue Service examination or otherwise.

(6) Meaning of terms. For purposes of this section—

(i) Closely held corporation. The term "closely held corporation" means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of the Code is met.

(ii) Personal service corporation. The term "personal service corporation" means any corporation (other than an S corporation) which is a Service organization (within the meaning of section 414(m)(3) of the Code).

(iii) Similar items of property. The phrase "similar items of property" means property of the same generic category or type, such as stamps, coins, lithographs, paintings, photographs, books, publicly traded stock, publicly traded stock, land, or buildings. For example, if a donor claims on his return for the year deductions of $2,000 for books given by her to College A, $2,500 for books given by her to College B, and $900 for books given by her to College C, the $3,500 threshold of paragraph (c)(1) of this section is
exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the books donated to A, B, and C. For rules regarding the number of qualified appraisal and appraisal summaries required when similar items of property are contributed, see paragraph (c) (3)(iii)(A) and (4)(iv)(B), respectively, of this section.

(iv) Publicly traded securities. The term "publicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) for which (as of the date of the contribution) market quotations are readily available on an established securities market. For purposes of this section, market quotations are readily available on an established securities market if a security is:

(A) Listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, including foreign securities listed on a recognized, foreign, national, or regional exchange; or

(B) Regularly traded in the national or regional over-the-counter market, for which published quotations are available.

(v) Nonpublicly traded securities. The term "nonpublicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) which are not publicly traded securities as defined in paragraph (g)(7)(iv) of this section.

(vi) Nonpublicly traded stock. The term "nonpublicly traded stock" means any stock of a corporation (evidence by a stock certificate) which is not a publicly traded security. The term stock does not include a debenture or any other evidence of indebtedness.

Par. 3. A new § 1.6050L-1T is added immediately after § 1.6050J-1T to read as follows:

§ 1.6050L-1T Temporary regulations; information return by donees relating to certain dispositions of donated property (temporary).

(a) In general. If the donee of any charitable deduction property (as defined in paragraph (d) of this section) sells, exchanges, or otherwise disposes of such property (or any portion thereof) within 2 years after the date of the contribution of such property, the donee shall make an information return on the form prescribed by the Internal Revenue Service.

(b) Information required to be provided on return. The information return required by paragraph (a) of this section shall include the following:

1. The name, address, and employer identification number of the donee;
2. The name, address and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a closely held corporation, personal service corporation, partnership, or S corporation);
3. A description of the property (or portion disposed of) in sufficient detail to identify the charitable deduction property;
4. The date of the contribution;
5. The amount received on the disposition;
6. The date of the disposition; and
7. Any other information as may be specified by the form or its instructions.

(c) Statement to be furnished to donors. Every donee making a return under section 6050L and this section with respect to the disposition of charitable deduction property contributed to the donee shall furnish a copy of the return to the donor of the property.

(d) Charitable deduction property. For purposes of this section, the term "charitable deduction property" means any property (other than money or publicly traded securities as defined in paragraph (c)(7)(iv) of § 1.170A-13T) contributed after December 31, 1984, with respect to which a donee signs an appraisal summary (as required by paragraph (c)(4)(i)(B) or (iv)(A) of § 1.170A-13T).

(e) Retention of appraisal summary. The donee shall retain the appraisal summary described in paragraph (c)(4) of § 1.170A-13T in the donee's records for 3 years or longer (or in the case of a donee who is a public charity and is required to retain records for 3 years or longer under the rules prescribed by the Board of Governors of the Federal Reserve System) and may be relevant in the administration of any internal revenue law.

(f) Place and time for filing information returns.—(1) Place for filing. The donee information return required by section 6050L and this section shall be filed with the Internal revenue service center listed on the return form or its instructions.

(2) Time for filing. The donee information return shall be filed on or before the 90th day after the donee sells, exchanges or otherwise disposes of the charitable deduction property (as described in paragraph (d) of this section).

(g) Penalties. For penalties for failure to comply with the requirements of this section, see sections 6652, 6676 and 6678.

(Authorized by the Office of Management and Budget under Control Number 1545-0399)

There is a need for immediate guidance with respect to the 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 the United States Code or subject to the effective date limitation of subsection (c) of that section.


(Approved by the Office of Management and Budget under control number 1545-0399)

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

Approved: December 26, 1984.

Charles E. Moore,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84-33841 Filed 12-25-84; 3:04 pm]

BILLING CODE 4822-01-M

25 CFR Part 1

[T.D. 8002]

Income Tax; Taxable Years Beginning After December 31, 1953; Substantialization of Charitable Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to substantiation requirements for charitable contributions by itemizing and nonitemizing taxpayers: This document reflects changes to the applicable tax law made by the Economic Recovery Tax Act of 1981. These regulations provide guidance to all taxpayers claiming deductions for charitable contributions.

DATES: This document is effective with respect to charitable contributions made during taxable years beginning on or after January 1, 1983.


SUPPLEMENTARY INFORMATION:

Background

Section 121 of the Economic Recovery Tax Act of 1981 amended sections 63 and 170 of the Code by providing a deduction from adjusted gross income...
for charitable contributions made by taxpayers who do not itemize deductions. The legislative history of the new provision reflects the expectation that regulations be developed to provide appropriate substantiation requirements, in addition to the currently applicable requirements, to assure substantiation and verification of charitable deductions.

On April 25, 1983, proposed amendments to the Regulations on Income Tax (26 CFR Part 1) under sections 63 and 170 of the Internal Revenue Code of 1984 were published in the Federal Register (48 FR 17916). These amendments were proposed to conform the regulations to amendments made to the Code by section 121 of the Economic Recovery Tax Act of 1981 (95 Stat. 196). These amendments proposed new substantiation requirements for taxpayers claiming charitable deductions.

No public hearing was held because none was requested. After consideration of all comments received regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. Additionally, section 155 of the Tax Reform Act of 1984 (Pub. L. 98-369, 96 Stat. 199) provides for substantiation requirements for a deduction in excess of $5,000 claimed for certain charitable contributions. Temporary regulations implementing section 155, together with a cross-reference notice, appear in this Federal Register.

Explanation of Provisions, Comments, and Changes to the Regulations

For taxable years beginning after December 31, 1982, the final regulations require a corporate or individual taxpayer making a charitable contribution of property other than money to have a receipt from the donee charitable organization and a reliable written record of specified information with respect to the donated property. A receipt must include the name of the donee, the date and location of the contribution, and a description of the property in detail reasonable under the circumstances (including the value of the property). An exception to the receipt requirement is provided in cases where the contribution is made in circumstances where it is impractical to obtain a receipt. In these cases, the taxpayer is required to maintain a reliable written record of specified information with respect to each item of donated property. The rules regarding the reliability of the written records are similar to those previously explained. The information required by these amendments must be stated in the taxpayer's income tax return if required by the return form or its instructions.

Finally, for charitable contributions of property other than money for which the taxpayer claims a deduction in excess of $500, the taxpayer is required to maintain additional records regarding the manner of acquisition of the property and the property's cost or other basis if it was held for less than 6 months prior to the date of contribution. For property held for 6 months or more preceding the date of construction, cost or other basis information should be maintained by the taxpayer if it is available.

Two comments suggested that the regulations require that receipts be signed by a representative of the donee charitable organization because a signed receipt would give the Internal Revenue Service an additional method of verifying authentic receipts and would limit the number of fraudulent deductions. This suggestion is not adopted in the final regulations because it is considered unnecessarily burdensome.

Other comments objected to the December 31, 1982, retroactive effective date of the notice of proposed rulemaking. These comments pointed out that taxpayers could not have anticipated the precise requirements of the notice before it was published. Therefore, the Treasury decision provides that at the option of the taxpayer the requirements provided for in the regulations before amendment by this Treasury decision, shall apply to all charitable contributions made on or before December 31, 1984.

Drafting Information

The principal author of these final regulations was Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, on matters of both substance and style.

Special Analyses

The Secretary of the Treasury has certified that this final rule will not have a significant impact on a substantial number of small entities because the number of significantly affected small entities is not substantial. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB. 1545-0754.

List of Subjects in 26 CFR 1.61-1-1.201-4

Income Taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. New § 1.170A-13 is added immediately after § 1.170A-12 to read as follows:

§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

(a) Charitable contributions of money made in taxable years beginning after December 31, 1982—(1) In General. If a taxpayer makes a charitable
contribution of money in a taxable year beginning after December 31, 1982, the taxpayer shall maintain for each contribution one of the following:

(i) A cancelled check.
(ii) A receipt from the donee charitable organization showing the name of the donee, the date of the contribution, and the amount of the contribution. A letter or other communication from the donee charitable organization acknowledging receipt of a contribution and showing the date and amount of the contribution constitutes a receipt for purposes of this paragraph (a).

(iii) In the absence of a canceled check or receipt from the donee charitable organization, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) Special rules—(i) Reliability of records. The reliability of the written records described in paragraph (a)(1)(iii) of this section is to be determined on the basis of all of the facts and circumstances of a particular case. In all events, however, the burden shall be on the taxpayer to establish reliability. Factors indicating that the written records are reliable include, but are not limited to:

(A) The contemporaneous nature of the writing evidencing the contribution.

(B) The regularity of the taxpayer’s recordkeeping procedures. For example, a contemporaneous diary entry stating the amount and date of the donation and the name of the donee charitable organization made by a taxpayer who regularly makes such diary entries would generally be considered reliable.

(C) In the case of a small amount, the existence of any written or other evidence from the donee charitable organization evidencing receipt of a donation that would not otherwise constitute a receipt under paragraph (a)(1)(ii) of this section (including an emblem, button, or other token traditionally associated with a charitable organization and regularly given by the organization to persons making cash donations).

(ii) Information stated in income tax return. The information required by paragraph (a)(1)(iii) of this section shall be stated in the taxpayer’s income tax return if required by the return form or its instructions.

(iii) The use of other accounting records. See paragraph (d)(1) of this section with regard to contributions of money made on or before December 31, 1984.

(b) Charitable contributions of property other than money made in taxable years beginning after December 31, 1982—(1) In general. If a taxpayer makes charitable contribution of property other than money in a taxable year beginning after December 31, 1982, the taxpayer shall maintain for each contribution a receipt from the donee charitable organization showing the following information:

(i) The name of the donee.

(ii) The date and location of the contribution.

(iii) A description of the property in detail reasonable under the circumstances (including the value of the property).

A letter or other written communication from the donee charitable organization acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (e.g., by depositing property at a charity’s unattended drop site). In all cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of this section.

(2) Special rules—(i) Reliability of records. The rules described in paragraph (a)(2)(i) of this section also apply to this paragraph (b) for determining the reliability of the written records described in paragraph (b)(1) of this section.

(ii) Content of records. The written records described in paragraph (b)(1) of this section shall include the following information and such information shall be stated in the taxpayers income tax return if required by the return form or its instructions:

(A) The name and address of the donee organization to which the contribution was made.

(B) The date and location of the contribution.

(C) A description of the property in detail reasonable under the circumstances (including the value of the property), and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the agreed report of the appraiser.

(E) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(a)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined. A taxpayer who elects under paragraph (d)(2) of §1.170A-8 to apply section 170(e)(1) to contributions and carryovers of 30 percent capital gain property shall maintain a written record indicating the years for which the election was made and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term “30-percent capital gain property,” see paragraph (d)(3) of §1.170A-8.

(F) If less than the entire interest in the property is contributed during the taxable year, the total amount claimed as a deduction for the taxable year due to the contribution of the property, and the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(G) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or other disposition of the property contributed, including for example, the terms of any agreement or understanding which—

(1) Restricts temporarily or permanently the donee’s right to use or dispose of the donated property.

(2) Reserves to, or confers upon, anyone (other than the donee organization or an organization participating with the donee organization in cooperative fundraising) any right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earns capital gain property for a particular use.

(3) Deductions in excess of $500 claimed for a charitable contribution of property other than money—(1) In general. In addition to the information
required under paragraph (b)(2)(ii) of this section, if a taxpayer makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, and claims a deduction in excess of $500 in respect of the contribution of such item, the taxpayer shall maintain written records that include the following information with respect to such item of donated property, and shall state such information in his or her income tax return if required by the return form or its instructions:

(A) The manner of acquisition, as for example by purchase, gift bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(B) The cost or other basis, adjusted as provided by section 1016, of property, other than publicly traded securities held by the taxpayer for a period of less than 6 months immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 6 months or more preceding the date on which the contribution was made.

(ii) Information on acquisition date or cost basis not available. If the return form or its instructions require the taxpayer to provide information on either the acquisition date of the property or the cost basis as described in paragraph (b)(3)(i) (A) and (B), respectively, of this section, and the taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall attach an explanatory statement to the return. If a taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall not be disallowed a charitable contribution deduction under section 170 for failure to comply with paragraph (b)(3)(i) (A) and (B) of this section.

(c) Taxpayer option to apply paragraph (d) (1) and (2) to pre-1985 contributions. See paragraph (d) (1) and (2) of this section with regard to contributions of property made on or before December 31, 1994.

[d] [Reserved]

Par. 2. Paragraph (a) § 1.170A-1 is amended by redesigning paragraph (a)(1) as paragraph (a), adding two cross-references, and removing “section 170(b)” and adding “section 170(a)” in lieu thereof. These redesignated, added, and revised provisions read as follows:

§ 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) Allowance of deduction. Any charitable contribution, as defined in section 170(c), actually paid during the taxable year is allowable as a deduction in computing taxable income irrespective of the method of accounting employed or of the date on which the contribution is pledged. However, charitable contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year as provided in section 170(a)(2) and § 1.170A-11. For rules relating to record keeping and return requirements in support of deductions for charitable contributions (whether by an itemizing or nonitemizing taxpayer) see § 1.170A-13. The deduction is subject to the limitations of section 170(b) and § 1.170A-8 or § 1.170A-11.

(b) For the purposes of section 170(d) and §§ 1.170A-10 and 1.170A-11, certain excess charitable contributions made by individuals and corporations shall be treated as paid in certain succeeding taxable years. For provisions relating to direct charitable deductions under section 63 by nonitemizers, see section 63(b)(1)(C) and (I) and section 170(I). For rules relating to the determination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer’s household and treated under section 170(g) as paid for the use of an organization described in section 170(c)(2), (3), or (4), see § 1.170A-2. For the reduction of any charitable contributions for interest on certain undeductible section 170(f)(5) and § 1.170A-3. For a special rule relating to the computation of the amount of the deduction with respect to a charitable contribution of certain ordinary income or capital gain property, see section 170(e) and § 1.170A-4 and § 1.170A-4A.

For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A-5. For rules with respect to transfers in trust and of partial interests in property, see section 170(e), section 170(f)(2), (3), § 1.170A-6, and § 1.170A-7. For definition of the term “section 170(b)(1)(A) organization,” see § 1.170A-9.

For valuation of a remainder interest in real property, see section 170(f)(4) and the regulations thereunder. The deduction for charitable contributions is subject to verification by the district director.

Par. 3. Paragraph (a)(2)(i) of § 1.170A-1 is redesignated as paragraph (d)(1) of new § 1.170A-13, paragraph (a)(2)(ii)(c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of § 1.170A-1 is redesignated as paragraph (d)(1)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (a), (b), and (c), and (ix), respectively, of new § 1.170A-13, as the heading of redesignated paragraph (d) is revised, and two new sentences are added at the beginning of redesignated paragraph (d) (1) and (2) of new § 1.170A-13, to read as follows:

§ 1.170A-13 Record keeping and return requirements for deductions for charitable contributions.

* * * * *

(d) Charitable contributions; information required in support of deductions for taxable years beginning before January 1, 1983—(1) In general. The paragraph (d)(1) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer the requirements of this paragraph (d)(1) shall also apply to all charitable contributions made on or before December 31, 1984 (in lieu of the requirements of paragraphs (a) and (b) of this section). * * * *

(d) Charitable contributions; information required in support of deductions for taxable years beginning before January 1, 1983—(2) By individual of property other than money. This paragraph (d)(2) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer, the requirements of this paragraph (d)(2) shall also apply to contributions of property made on or before December 31, 1984 (in lieu of the requirements of paragraphs (a) and (b) of this section). * * * *

§ 1.170A-1 [Amended]

Par. 4. Paragraph (a)(2)(iii) of § 1.170A-1 is redesignated as paragraph (d)(3) of new § 1.170A-13, and “§300” is removed therefrom and “§500” (§500 in the case of a charitable contribution made in a taxable year beginning before January 1, 1983) is added in its place.

Par. 5. The following new section is added immediately after § 1.63-1:

§ 1.63-2 Cross reference.

For rules with respect to charitable contribution deductions for nonitemizing taxpayers, see section 63(b)(1)(C) and (I) and section 170(I) of the Internal Revenue Code of 1954.

This Treasury decision is issued under the authority contained in sections 170(a)(1) and 7805 of the Internal Revenue Code of 1954 (88A Stat. 58, 26 U.S.C. 170(a)(1); 86A Stat. 917, 29 U.S.C. 7805, respectively). These regulations have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507). Approved by the Office of
Management and Budget under control number 1545-0754. 

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


Charles E. McLure, Jr.,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84-33840 Filed 12-26-84; 3:04 pm]

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26 CFR Parts 1 and 6a

[T.D. 8003]

Income Tax: Taxable Years Beginning After December 31, 1953; Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Revenue Service, Treasury.

SUMMARY: This document provides temporary Income Tax Regulations relating to the withholding that is required upon the disposition of a U.S. real property interest by a foreign person. These regulations affect purchasers of U.S. real property interests and entities with foreign interest-holders that dispose of U.S. real property interests. They provide the public with the guidance necessary to comply with the Tax Reform Act of 1984. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the proposed rules section of today’s Federal Register.

DATES: These temporary regulations are effective January 1, 1985. The temporary regulations are generally effective with respect to dispositions of U.S. real property interests after December 31, 1984.


SUPPLEMENTARY INFORMATION:

Background


Description of Temporary Regulations

Organization

The temporary regulations under section 1445 are organized as follows. First, § 1.1445-1T sets forth general rules concerning the obligation to withhold under section 1445(e), and the time and manner in which to fulfill that obligation. Section 1.1445-2T provides rules concerning various means of determining that withholding is not required with respect to a particular transaction. For those situations in which withholding is required, § 1.1445-3T provides rules pursuant to which that requirement can be reduced or excused under an agreement with the Internal Revenue Service. The possible liability of agents of the transferee and transferor is dealt with in § 1.1445-4T.

Section 1.1445-5T provides rules concerning the withholding that is required under section 1445(e) with respect to distributions and other transactions involving interests in corporations, partnerships, trusts, and estates. Finally, § 1.1445-6T provides rules pursuant to which the withholding required under section 1445(e) can be reduced or excused under an agreement with the Internal Revenue Service, and § 1.1445-7T explains the treatment of a foreign corporation that has made an election under section 637(f).

Section 1.1445-1T. General Rules

Section 1.1445-1T contains general rules concerning the withholding requirements of section 1445. The purpose and scope of the regulations are summarized in paragraph (a) of the section. Paragraph (b) requires that all transferees of U.S. real property interests withhold a tax equal to 10 percent of the amount realized by the transferee, if the transferor is a foreign person and the disposition takes place on or after January 1, 1985. The transferee has a duty to withhold that amount, regardless of the amount of cash otherwise present in the transaction.

Under the rules of paragraph (c) of § 1.1445-1T, amounts withheld must generally be reported and paid over, using Forms 8283 and 8289-A, by the 10th day after the transfer. However, if a timely application has been made to reduce or excuse withholding under the rules of § 1.1445-3T, then the amount withheld is not generally required to be paid over until the Service’s final resolution of that application. The information required to be included on Forms 8283 and 8289-A is described in paragraph (d). Paragraph (e) of § 1.1445-1T specifies that a transferee who fails
to withhold in accordance with the requirements of section 1445 may be held liable for the tax. The effect that withholding has upon the obligations of the transferee is described in paragraph (f) of the section. The withholding of tax under section 1445 does not excuse the transferee from filing a tax return, but amounts withheld may be claimed as a credit against the transferee’s tax liability shown on such a return by attaching the stamped copy of Form 8288–A that will be forwarded to the transferee by the Service. Finally, paragraph (g) provides definitions of relevant terms. Those definitions supplement the definitions provided in the regulations under section 897, which will generally be applied for purposes of section 1445 as well. The additional definitions include a definition of the date of a transfer as that set out in the relevant regulations. A transferee can thus determine that withholding is not required with respect to interests that are determined to appear that false certifications are made. Paragraph (g)(2) of § 1.1445-2T provides special procedural rules concerning the withholding that would otherwise be required upon transfers in reversion or foreclosure. In general, a foreclosure creditor or other transferee in a foreclosure is only required to withhold with respect to the之声，在at the time of the realization of amounts in excess of the secured debt, provided that such creditor or other transferee provides a notice of the transfer in foreclosure to the Service. Paragraph (g)(4) specifies that withholding is generally not required with respect to payments on installment obligations (if otherwise-applicable withholding obligations were met). Paragraph (g)(5) provides that states, possessions, and political subdivisions are not required to withhold under section 1445. Finally, paragraph (g)(6) provides that a foreign government that possesses, interests, and other foreign persons are not required to withhold under section 1445 if the transferee is a foreign person. Section 1.1445-3T Adjustments to Withholding Pursuant to Withholding Certificate Withholding under section 1445 may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of § 1.1445-3T. Such a certificate serves to fulfill the requirements of section 1445(b)(4) concerning qualifying statements, section 1445(e)(1) concerning transfers’ tax liability, or section 1445(e)(2) concerning the
Secretary's authority to prescribe reduced withholding.

Paragraph (a) of § 1.445-3T provides general rules concerning withholding certificates, while paragraph (b) explains the manner in which either the transferee or transferor may apply for such a certificate. The Service will generally act upon an application for a withholding certificate within 90 days of its receipt, but in unusually complicated cases additional processing time may be necessary. In such cases the Service will notify the applicant and establish a target date for final action (contingent upon the applicant's timely submission of any additional information requested).

Paragraphs (c), (d), and (e) of § 1.445-3T provide rules concerning the three bases upon which the Service may issue a withholding certificate. First, under paragraph (c), the Service may issue a certificate that reduces or excuses withholding, based upon a determination of the transferor's maximum tax liability on the disposition. In general, the transferor's maximum tax liability is determined by multiplying the gain realized by the transferor times the appropriate rate of tax, with appropriate adjustments made for the effect of any factor that would increase or reduce the amount of tax due. In addition, if the transferor previously failed to withhold with respect to the acquisition of the property now being disposed of, then the transferor must pay that unsatisfied withholding liability.

Second, under paragraph (d) of § 1.445-3T the Internal Revenue Service may issue a certificate that excuses withholding if it is established that the transferor's gain from the disposition of a U.S. real property interest will be exempt from U.S. tax, and that the transferor has no unsatisfied withholding liability.

Third, under paragraph (e) of § 1.445-3T the Service may issue a withholding certificate that reduces or excuses withholding if either the transferee or transferor enters into an agreement with the Service securing the payment of the tax. Such an agreement must secure the payment of either the amount that would otherwise be required to be withheld, or the transferor’s maximum tax liability (with certain adjustments to each). Major types of security acceptable to the Service include a bond with a surety or guarantor, a bond with collateral, a letter of credit, and, in limited circumstances, a guarantee. The Service may also accept any other form of security that it finds to be adequate.

Paragraph (f) of § 1.445-3T explains how a transferor may apply for an early refund of amounts withheld that are in excess of the amount specified in a withholding certificate issued by the Service.

Section 1.1445-4T: Liability of Agents

Section 1.1445-4T provides rules concerning the possible liability of agents of the transferee and transferor. Generally, if an agent knows that either a certification of non-foreign status or a non-U.S. real property interest statement is false, then that agent must notify the transferee of the false document. An agent that fails to do so may be held liable for an amount equal to the compensation that the agent derives from the transaction. Similar rules apply with respect to agents who participate in transactions upon which withholding is required under the rules of § 1.1445-5T (described immediately below).

Section 1.1445-5T provides rules concerning the withholding requirements of section 1445(e), relating to distributions and other transactions involving domestic or foreign partnerships, trusts, and estates. Those requirements impose a withholding obligation upon the entity itself or upon a fiduciary thereof. Paragraph (a) describes the purpose and scope of the section, while paragraph (b) provides rules that apply generally to the three separate withholding requirements set forth in paragraphs (c), (d), and (e).

Paragraph (b)(1) specifies that transactions subject to withholding under section 1445(e) are not also subject to withholding under the general rules of section 1445(a). Paragraph (b)(2) sets forth a rule parallel to that of § 1.1445-2T(d)(2), providing that withholding is not required if a nonrecognition provision applies to a transfer and a notice of the transfer is provided to the Service. Paragraph (b)(3) provides rules parallel to those of § 1.1445-2T(b), pursuant to which an entity or fiduciary may determine that withholding is not required because the holder of an interest in the entity is not a foreign person. Similarly, paragraph (b)(4) provides rules parallel to those of § 1.1445-2T(c), pursuant to which an entity or fiduciary may determine that withholding is not required because the property transferred is not a U.S. real property interest. Paragraph (b)(5) describes the manner in which an entity or fiduciary must report and pay over amounts withheld. In general, such amounts must be reported and paid over using Forms 8288 and 8288-A by the 10th day after the transfer, but appropriate relief is provided for cases in which an application for a withholding certificate is pending.

Paragraph (b)(6) specifies the liability that attaches to a person required to withhold under section 1445(e) that fails to do so, and paragraph (b)(7) specifies the effect of withholding upon the foreign interest-holder with respect to whom withholding is carried out. In general, each such interest-holder must file a return and may claim as a credit thereon an appropriate share of the amount withheld, by attaching the stamped copy of Form 8288-A that is provided by the Service.

Finally, paragraph (b)(8) provides effective date rules for each of the withholding requirements imposed under section 1445(e). The requirements imposed by section 1445(e)(1), (2), and (3) apply as of January 1, 1985. However, the requirements imposed by section 1445(e)(4) and (5), relating to taxable distributions by, and dispositions of interests in, partnerships, trusts, and estates will not apply until the effective date of a Treasury decision under the relevant substantive provisions in section 897(e) and (g).

Paragraph (c) of § 1.1445-5T provides rules concerning the withholding obligation imposed under section 1445(e)(1) with respect to dispositions of U.S. real property interest by domestic partnerships, trusts, and estates. In general, under paragraph (c)(1) the partnership or the fiduciary of the trust or estate must withhold a tax equal to 10 percent of each foreign partner’s or beneficiary’s proportional share of the amount realized by the entity upon the disposition. The regulations interpret the requirements of section 1445(e)(1) in a manner that is consistent with the operation of section 1445 generally. Therefore, the regulations do not adopt a suggested reading of the statutory language that would impose limitations on the withholding requirement in a manner that would be at odds with the remainder of section 1445. The Service believes that its implementation of the statutory language is consistent with the intent of Congress in imposing withholding obligations on domestic partnerships, trusts, and estates. The withholding obligation imposed by paragraph (c) applies to trustees of grantor trusts (such as Illinois land trusts) even if such trustees are not generally treated as true fiduciaries under state law.

Exceptions to the withholding requirement are explained in paragraph (c)(2); a partnership or fiduciary is not required to withhold with respect to a partner or beneficiary that is determined...
not to be a foreign person under the rules of paragraph (b)(3), nor is withholding required if the interest transferred is determined not to be a U.S. real property interest under the rules of paragraph (b)(4). Special rules specify the consequences if a determination under paragraph (b)(3) or (4) is overturned by a belated notice from an agent that a certification or statement relied upon for such determination is false. Generally, the entity or fiduciary may rely upon that statement relied upon for such determination only with respect to amounts previously distributed to partners or beneficiaries. The amount required to be withheld can be adjusted pursuant to a withholding certificate obtained from the Internal Revenue Service pursuant to the rules of § 1.1445-6T.

Paragraph (c)(4) provides that for purposes of the withholding requirements of section 1445(e)(1) and (3), a real estate investment trust (REIT) will be treated as a trust regardless of the actual legal form of the entity. This rule has been adopted to coordinate the withholding obligations of such entities as closely as possible with the substantive tax liabilities of their interest-holders.

Paragraph (d) of § 1.1445-5T provides rules concerning the withholding obligations imposed under section 1445(e)(2) with respect to distributions of U.S. real property interests by foreign corporations to any interest-holder. Such a corporation is required to withhold 28 percent of the amount of gain required to be recognized by the corporation upon the distribution under the rules of section 897(d). Withholding is at a different rate than elsewhere under section 1445 because in this case the person required to withhold is also the taxpayer, and therefore possesses all the information necessary to determine the actual amount of gain to be recognized.

This withholding requirement does not apply if the property distributed is determined not to be a U.S. real property interest under the rules of paragraph (b)(4). However, if the corporation relied upon a statement of non-U.S. real property interest status that is later found to have been false, the duty to withhold applies in full. This rule has been adopted because a foreign corporation that belatedly finds that it has a withholding obligation is no less able to satisfy that obligation than a corporation that, at the outset, is aware of the obligation. Thus is so because the transaction that triggers the obligation is one that results in a substantive tax on the distributing corporation itself, rather than on its shareholders. Therefore, the only relief that is appropriate is an extension of the withholding deadline to take into account the foreign corporation’s belated awareness of its duty to withhold. A withholding certificate that reduces or excuses withholding otherwise required under paragraph (d) may be obtained pursuant to the rules of § 1.1445-6T.

Paragraph (e) of § 1.1445-5T provides rules concerning the withholding obligation imposed under section 1445(e)(4) and (5) upon taxable distributions by and dispositions of interests in partnerships, trusts, and estates. Such rules are reserved to provide future rules concerning the withholding required under section 1445 in the case of large entities or entities that make several dispositions of interests in partnerships, trusts, and estates. Such notive must inform the record owner of the amount with held under section 1445(e)(2) with respect to distributions of U.S. real property interest status, that is later found to be false, that is later found to have been false, that is later found to have been false, that is later found to have been false, that is later found to have been false, that is later found to have been false, that is later found to have been false, that is later found to have been false.

Paragraphs (f) and (g) of § 1.1445-5T are reserved to provide future rules concerning the withholding required under section 1445(e)(4) and (5) upon taxable distributions by and dispositions of interests in partnerships, trusts, and estates. Such rules will be provided at the time that a Treasury decision is published under the related substantive rules of section 897(e) and (g), and will impose withholding obligations only on a prospective basis.

Section 1.1445-6T: Adjustments to Pursuant to Withholding Certificate of Amount Withheld Under Section 1445(e)

Section 1.1445-6T provides rules pursuant to which a withholding certificate may be obtained from the Internal Revenue Service to reduce or excuse withholding otherwise required under section 1445(e). In general, the provisions of § 1.1445-6T closely parallel the withholding certificate rules of § 1.1445-5T, with several technical changes required by the differences between the withholding requirements covered. The most significant change is that the tax liability that must be secured under § 1.1445-6T is that of a “relevant taxpayer,” rather than that of the transferor. A relevant taxpayer is a foreign person that will bear substantive U.S. income tax liability by reason of the transaction upon which withholding is required. A withholding certificate may be obtained with respect to any or all of the relevant taxpayers in a given transaction, and may be
obtained either by the entity or fiduciary required to withhold or by a relevant taxpayer directly.

Section 1.1445-7T. Treatment of a Foreign Corporation That Has Made an Election Under Section 897(i) To be Treated as a Domestic Corporation

Section 1.1445-7T clarifies the treatment of a foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation. In general, such a corporation will be treated as a domestic corporation for purposes of section 1445, although subject to certain additional requirements. Thus, § 1.1445-2T(b) provides that an electing foreign corporation may make a certification of non-foreign status, but such certification is only valid if it is attached to a copy of the Service's acknowledgment of the corporation's election. Withholding is required under section 1445(a) with respect to transfers of interests in electing corporations, unless the transferor asserts that such interests do not constitute U.S. real property interests. In addition, such a corporation may be required to withhold under section 1445(e)[3] with respect to non-dividend distributions to interest-holders.

Although this approach is not consistent with the particular rule suggested by the Conference Report, H.R.Rep. No. 881, 98th Cong., 2d Sess. 946-7 (1984), the Service believes that the conference's intent of simplifying administration of section 1445, treating an electing foreign corporation as a domestic corporation for substantive purposes but a foreign corporation for withholding purposes would have created a disparity between substantive tax liabilities and the withholding that was carried out. This would have required a complicated series of credit accounting to match up amounts withheld with actual liabilities, and these rules would have imposed substantial administrative burdens on both taxpayers and the Service. Because the anticipated complexity of the approach suggested in the Conference Report appears at odds with its stated intent of simplifying administration of section 1445, the Service has found it appropriate to administer the statute in the manner most consistent with the intent of Congress.

Reporting Under Section 6039C

The Service is not at this time exercising the authority it is granted under section 6039C to require information reporting with respect to foreign investment in U.S. real property.

The Service will consider the imposition of such a requirement at a future date, particularly if it finds that compliance with the provisions of section 1445 is inadequate. Such a requirement would only be imposed prospectively. The existing proposed and temporary regulations under section 6039C are withdrawn.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 20, 1983. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

These regulations were submitted to The Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545-0046.

Drafting Information

The principal author of these regulations is Robert E. Culbertson, Jr., of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Parts 1 through 1.997-1


Adoption of Amendments to the Regulations

The Income Tax Regulations (26 CFR Parts 1 and 6a) are amended as follows:

PART 1—[AMENDED]

Paragraph 1. Sections 1.1445-1T through 1.1445-7T are added immediately after §1.1443-1, to read as follows:

§ 1.1445-1T Withholding on dispositions of U.S. real property interests by foreign persons: In general (temporary).

(a) Purpose and scope of regulations. These regulations set forth rules relating to the withholding requirements of section 1445. In general, section 1445(a) provides that any person who acquires a U.S. real property interest from a foreign person must withhold a tax of 10 percent from the amount realized by the transferor foreign person (or a lesser amount established by agreement with the Internal Revenue Service). Section 1445(e) provides special rules requiring withholding on distributions and certain other transactions by corporations, partnerships, trusts, and estates. This § 1.1445—1T provides general rules concerning the withholding requirement of section 1445(a), as well as definitions applicable under both section 1445(a) and 1445(e). Section 1.1445—2T provides for various situations in which withholding is not required under section 1445(a). Section 1.1445—3T describes the duties of agents in transactions subject to withholding under either section 1445(a) or 1445(e). Section 1.1445—4T provides rules concerning the withholding required under section 1445(e), while § 1.1445—5T provides rules for adjustments to the amount required to be withheld under section 1445(e). Finally, § 1.1445—6T provides rules concerning the treatment of a foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation.

(b) Duty to withhold—(1) In general. Transferees of U.S. real property interests are required to deduct and withhold a tax equal to 10 percent of the amount realized by the transferor, if the transferor is a foreign person and the disposition takes place on or after January 1, 1983. Neither the transferee's duty to withhold nor the amount required to be withheld is affected by the amount of cash to be paid by the transferee. Amounts withheld must be reported and paid over in accordance with the requirements of paragraph (c) of this section. Failures to withhold and pay over are subject to the liabilities set forth in paragraph (e) of this section. If two or more persons are joint transferees of a U.S. real property interest, each such person is subject to the obligation to withhold. That obligation is fulfilled with respect to each such person if any one of them withholds and pays over the required amount in accordance with the rules of this section. If the amount realized (as
Withholding is not required with respect to a real property interest if a real property interest withholding is not required. For example, if the class or type of property interest is a U.S. real property interest as defined in paragraph (g)(5) of this section, then the amount withheld shall be that which is ultimately paid over to the Internal Revenue Service until the 10th day following the Service's final determination with respect to the application for a withholding certificate.

(iii) Anti-abuse rule. A transferee that in reliance upon the rules of this paragraph (c)(2) fails to report and pay over amounts withheld by the 10th day following the date of the transfer, shall be subject to the payment of interest and penalties if the relevant application for a withholding certificate was submitted for a principal purpose of delaying the transferee’s payment to the IRS of the amount withheld. Interest and penalties shall be assessed on the amount that is ultimately paid over (or collected pursuant to the agreement) with respect to the period between the 10th day after the date of the transfer and the date on which payment is made (or collected). A principal purpose of delaying payment of the amount withheld shall be presumed if—

(A) The transferee applies for a withholding certificate pursuant to § 1.1445–3T(c) based on a determination of the transferor’s maximum tax liability, and

(B) Such liability is ultimately determined to be equal to 90 percent or more of the amount that was otherwise required to be withheld and paid over.

However, the presumption created by the previous sentence may be rebutted by evidence establishing that delaying payment of the amount withheld was not a principal purpose of the transaction.

(b) Contents of Forms 8288 and 8288–A—(1) Transactions subject to section 1445(a). Any person that is required to file Forms 8288 and 8288–A pursuant to section 1445(a) and the rules of this section must set forth therein the following information:

(i) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of any entity) of the transferee(s) filing the return;

(ii) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of any entity) of the transferor(s);

(iii) A brief description of the U.S. real property interest transferred, including its location and the nature of any improvements in the case of real property, and the class or type and amount of interests transferred in the case of interests in a corporation that constitute U.S. real property interests;

(iv) The date of the transfer;

(v) The amount realized by the transferor, as defined in paragraph (g)(5) of this section;

(vi) The amount withheld by the transferee and whether withholding is at the statutory or reduced rate; and

(vii) Such other information as the Commissioner may require.

(2) Transactions subject to section 1445(e). Any person that is required to file Forms 8288 and 8288–A pursuant to the rules of § 1.1445–5T must set forth therein the following information:

(i) The name, identifying number (if any), and office address of the entity or fiduciary filing the return;

(ii) The amount withheld by the entity or fiduciary;

(iii) The date of the transfer;

(iv) In the case of a transaction subject to withholding pursuant to section 1445(e)(1) and § 1.1445–5T(c):

(A) A brief description of the U.S. real property interest transferred, as described in paragraph (e)(1)(iii) of this section;

(B) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of any entity) of each holder of an interest in the entity that is a foreign person; and

(C) Each such interest-holder's pro rata share of the amount withheld;

(v) In the case of a distribution subject to withholding pursuant to section 1445(e)(2) and § 1.1445–5T(d):

(A) A brief description of the U.S. real property interest transferred, as described in paragraph (e)(1)(iii) of this section; and

(B) The amount of gain recognized upon the distribution by the corporation;
(vi) In the case of a distribution subject to withholding pursuant to section 1445(e) and § 1.1445–5T(e):

(A) A brief description of the property distributed by the corporation;

(B) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of each holder of an interest in the entity that is a foreign person;

(C) The amount realized upon the distribution by each such foreign interest holder; and

(D) Each foreign interest-holder’s proportionate share of the amount withheld; and

(vii) Such other information as the Commissioner may require.

(e) Liability of transferee upon failure to withhold. Every person required to deduct and withhold tax under section 1445 is liable to the extent of the amount of tax due for failure to do so. Such a transferee may also be subject to criminal penalties under section 6654.

Corporate officers or other responsible persons may be subject to a civil penalty under section 6672 (equal to the amount that should have been withheld and paid over).

(f) Effect of withholding on transferor. The withholding of tax under section 1445 does not excuse a foreign person that disposes of a U.S. real property interest from filing a U.S. tax return with respect to the income arising from the disposition. Form 1040NR, 1041, or 1120F, as appropriate, must be filed, and any tax due must be paid, by the filing deadline generally applicable to such person. (The return may be filed by such later date as is provided in an extension granted by the Internal Revenue Service.) Any tax withheld under section 1445(a) shall be credited against the amount due, as computed in such return. A stamped copy of Form 8288–A will be provided to the transferor by the Service (under paragraph (c) of this section), and must be attached to the transferor’s return. If the amount withheld under section 1445(a) constitutes less than the full amount of the transferor’s U.S. tax liability for that taxable year, then a payment of estimated tax may be required to be made pursuant to sections 6155 or 6654 prior to the filing of the income tax return for that year.

Alternatively, if the amount withheld under section 1445(a) exceeds the transferor’s maximum tax liability with respect to the disposition (as determined by the IRS), then the transferor may seek an early refund of the excess pursuant to § 1.1445–3T(f), or a normal refund upon the filing of a tax return. However, a transferor that takes gain into account in accordance with the provisions of section 897 shall not be entitled to a refund of the amount withheld, unless a withholding certificate providing for such a refund is obtained from the Internal Revenue Service pursuant to the provisions of § 1.1445–3T. If two or more foreign persons jointly transfer a U.S. real property interest, each transferee shall be credited with such portion of the amount withheld as such transferees mutually agree. Such transferors must request that the transferee reflect the agreed-upon crediting of the amount withheld on the Forms 8288–A filed by the transferee.

(g) Definitions—(1) In general. Unless otherwise specified, the definitions of terms provided in § 1.697–3 shall apply for purposes of this section and §§ 1.1445–2T through 1.1445–7T. For purposes of section 1445 and the regulations thereunder, definitions of other relevant terms are provided in this paragraph (g).

In addition, the term “residence” is defined in § 1.1445–2T(c)(1). The terms “transferor’s agent” and “transferee’s agent” are defined in § 1.1445–4T(f), and the term “relevant taxpayer” is defined in § 1.1445–6T(a)(2).

(2) Transfer. The term “transfer” means any transaction that would constitute a disposition for any purpose of the Internal Revenue Code and regulations thereunder.

(i) The cash paid, or to be paid, and (ii) The fair market value of other property transferred, or to be transferred, and (iii) The outstanding amount of any liability assumed by the transferee to which the U.S. real property interest is subject immediately before and after the transfer.

(3) Date of transfer. The date of transfer of a U.S. real property interest is the first date on which consideration is paid (or a liability assumed) by the transferee. However, for purposes of section 1445(e) (2), (3), and (4) only, the date of transfer is the date of the distribution that gives rise to the obligation to withhold. For purposes of this paragraph (g)(6), the payment of consideration does not include any deposit, earnest money, a good faith deposit, or any similar sum that is primarily intended to bind the transferee or transferee to the entering or performance of a contract. Such a payment will not constitute a payment of consideration solely because it may ultimately be applied against the amount owed to the transferor by the transferee. Such a payment is presumed to be earnest money, a good faith deposit, or a similar sum if it is subject to forfeiture in the event of a failure to enter into a contract or a breach of contract. However, a payment that is not forfeitable may nevertheless be found to constitute earnest money, a good faith deposit, or a similar sum. § 1.1445–2T

§ 1.1445–3T

Situations in which withholding is not required under section 1445(a) (temporary).

(a) Purpose and scope of section. This section provides rules concerning various situations in which withholding is not required under section 1445(a). In general, a transferee has a duty to withhold under section 1445(a) only if both of the following are true:

(1) The transferor is a foreign person; and

(2) The transferee is acquiring a U.S. real property interest.

Thus, paragraphs (b) and (c) of this section provide rules under which a transferee of property cannot assert that he has no duty to withhold because one or the other of the two key elements is missing. Under paragraph (b), a
transferee may determine that no withholding is required because the transferor is not a foreign person. Under paragraph (c), a transferee may determine that no withholding is required because the property acquired is not a U.S. real property interest. Finally, paragraph (d) of this section provides rules concerning exceptions to the withholding requirement.

(b) Transferor not a foreign person—(1) In general. No withholding is required under section 1445 if the transferor of a U.S. real property interest is not a foreign person. Therefore, paragraph (b)(2) of this section provides rules pursuant to which the transferee can provide a certification of non-foreign status to inform the transferee that withholding is not required. A transferee that obtains such a certification must retain that document for five years, as provided in paragraph (b)(3) of this section. Except to the extent provided in paragraph (b)(4) of this section, the obtaining of this certification excuses the transferee from any liability otherwise imposed by section 1445 and § 1.1445-1T(e).

However, section 1445 and the rules of this section do not impose any obligation upon a transferee to obtain a certification from the transferor; thus, a transferee may instead rely upon other means to ascertain the non-foreign status of the transferor. If, however, the transferee relies upon other means and the transferor was, in fact, a foreign person, then the transferee is subject to the liability imposed by section 1445 and § 1.1445-1T(e).

(2) Transferor's certification of non-foreign status—(i) In general. A transferee of a U.S. real property interest is not required to withhold under section 1445(a) if, prior to or at the time of the transfer, the transferor furnishes to the transferee a certification that—

(A) States that the transferor is not a foreign person.

(B) Sets forth the transferor's name, identifying number and home address (in the case of an individual) or office address (in the case of an entity), and

(C) Is signed under penalties of perjury.

In general, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, but not a resident alien individual. In this regard, see § 1.897-1(b)(1). However, a foreign corporation that has made a valid election under section 897(i) is generally not treated as a foreign person for purposes of section 1445. In this regard, see § 1.1445-7T. Pursuant to § 1.897-1(p), an individual's identifying number is the individual’s Social Security number and any other person’s identifying number is its U.S. employer identification number. A certification pursuant to this paragraph (b) must be verified as true and signed under penalties of perjury by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b), nor is any particular language required, so long as the document meets the requirements of this paragraph (b)(2)(i).

Samples of acceptable certifications are provided in paragraph (b)(2)(i) of this section.

(ii) Foreign corporation that "has made election under section 897(i). A foreign corporation that has made a valid election under section 897(i) to be treated as a domestic corporation for purposes of section 897 may provide a certification of non-foreign status pursuant to this paragraph (b)(2). However, an election foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897-3(d)(4).

(iii) Sample certifications—(A) Individual transferee. "Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. If a transferee (buyer) of a U.S. real property interest, I, [name of transferee], hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is [social security number]; and
3. My home address is [home address].

I understand that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of [name of transferee].

[Signature and date]

[Title]

(B) Entity transferee. "Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [name of transferee], the undersigned hereby certifies the following on behalf of [name of transferee]:

1. [Name of transferee] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. [Name of transferee]'s U.S. employer identification number is [employer identification number], and
3. [Name of transferee]'s office address is [office address].

[Name of transferee] understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of [name of transferee].

[Signature and date]

[Title]

(C) Transferee must retain certification. If a transferee obtains a transferor's certification pursuant to the rules of this paragraph (b), then the transferee must retain that certification until the end of the fifth taxable year following the taxable year in which the transfer takes place. The transferee must retain the certification, and make it available to the Internal Revenue Service when requested, in accordance with the requirements of section 6001 and regulations thereunder.

(4) Reliance upon certification not permitted—(i) In general. A transferee may not rely upon a transferor’s certification pursuant to this paragraph (b) under the circumstances set forth in either subdivision (ii) or (iii) of this paragraph (b)(4).

In either of those circumstances, a transferee’s withholding obligation shall apply as if a certification had never been obtained, and the transferee is fully liable pursuant to section 1445 and § 1.1445-1T(e) for any failure to withhold.

(ii) Failure to attach IRS acknowledgment of election. A transferee that knows that the transferor is a foreign corporation may not rely upon a certification of non-foreign status provided by the corporation on the basis
of election under section 897(i), unless there is attached to the certification a copy of the acknowledgment by the Internal Revenue Service of the corporation's election, as required by paragraph (b)(2)(ii) of this section.

(iii) Knowledge of falsity. A transferee is not entitled to rely upon a transferee's certification if prior to or at the time of the transfer, the transferee either—

(A) Has actual knowledge that the transferee's certification is false; or

(B) Receives a notice that the certification is false from a transferor's or transferor's agent, pursuant to § 1.1445-4T.

(iv) Related notice of false certification. If after the date of the transfer a transferee receives a notice that a certification is false, then that transferee is entitled to rely upon the certification only with respect to consideration that was paid prior to receipt of the notice. Such a transferee is required to withhold a full 10 percent of the amount of consideration that remains to be paid, if possible. Thus, if 10 percent or more of the amount realized remains to be paid, then the transferee is required to withhold and pay over the full 10 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration, until the full 10 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 10th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this paragraph (b)(4)(iv) may not obtain a withholding certificate pursuant to § 1.1445-3T, but must instead withhold and pay over the amounts required by this paragraph.

(c) Transferred property not a U.S. real property interest—(1) In general. No withholding is required under section 1445 if the transferee acquires only property that is not a U.S. real property interest. As defined in section 897(c) and § 1.897-1(c), a U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property. This paragraph (c) provides rules pursuant to which a person acquiring an interest in a U.S. corporation may determine that withholding is not required because that interest is not a U.S. real property interest. To determine whether an interest in tangible property constitutes a U.S. real property interest the acquisition of which would be subject to withholding, see § 1.897-1 (b) and (c).

(2) Interests in publicly traded entities. No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Similarly, no withholding is required under section 1445(a) upon the acquisition of an interest in a publicly traded partnership or trust. However, the rule of this paragraph (c)(2) shall not apply to the acquisition, from a single transferor (or related transferees) in a single transaction (or related transactions), of an interest described in § 1.631-1(c)(2)(ii)(B) (relating to substantial amounts of non-publicly traded interests in publicly traded corporations) or to similar interests in publicly traded partnerships or trusts. The person making an acquisition described in the preceding sentence must otherwise determine whether withholding is required, pursuant to section 1445 and the regulations thereunder. Transactions shall be deemed to be related if they are undertaken within a single period of one another or if it can otherwise be shown that they were undertaken in pursuance of a prearranged plan.

(3) Transferee receives statement that interest in corporation is not a U.S. real property interest—(i) In general. No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation, if the transferor provides the transferee with a copy of a statement, issued by the corporation pursuant to § 1.631-2(h), certifying that the interest is not a U.S. real property interest. In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the period in which the interest was held by its present holder, if shorter. (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor.) See § 1.631-2 (f) and (h). The corporation may provide such a statement directly to the transferee at the transferee's request. The transferee must request such a statement prior to the transfer, and shall, to the extent possible, specify the anticipated date of the transfer. (Note that pursuant to § 1.631-2(h)(1)(iv) the corporation is permitted 30 days to respond to the request.) A corporation's statement may be relied upon for purposes of this paragraph (c)(3) only if the statement is dated not more than 30 days prior to the date of the transfer. A transferee may also rely upon a corporation's statement that is voluntarily provided by the corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of this paragraph (c)(3) and § 1.631-2(h).

(ii) Reliance on statement not permitted. A transferee is not entitled to rely upon a statement that a corporation is not a U.S. real property holding corporation if, prior to or at the time of the transfer, the transferee either—

(A) Has actual knowledge that the statement is false, or

(B) Receives a notice that the statement is false from a transferor's or transferee's agent, pursuant to § 1.1445-4T.

Such a transferee's withholding obligations shall apply as if a statement had never been given, and such a transferee may be held fully liable pursuant to § 1.1445-4T(e) for any failure to withhold.

(d) Exceptions to requirement of withholding—(1) Purchase of residence for $300,000 or less. No withholding is required under section 1445(a) if an individual transferee acquires a U.S. real property interest for use as a residence and the amount realized on the transaction is $300,000 or less. For purposes of this section, a U.S. real property interest is acquired for use as a residence if on the date of the transfer the transferee has definite plans to reside at the property for at least 50 percent of the number of days that the property is in use, during each of the first two 12-month periods following the date of the transfer. A transferee shall be considered to reside at a property on any day on which a member of the transferee's family, as defined in section 267(c)(4), resides at the property. No form or other document need be filed with the Internal Revenue Service to establish a transferee's entitlement to rely upon the exception provided by this paragraph (d)(1). A transferee who fails to withhold in reliance upon this exception, but who does in fact reside at the property for the minimum number of days set forth above, shall be liable for the failure to withhold (if the transferor was a foreign person and did not pay the full U.S. tax due on any gain recognized upon the transfer). However, if the transferee establishes that the failure to reside the minimum number of days was caused by a change in circumstances that could not reasonably have been anticipated at the time of the transfer, the transferee shall not be liable for the failure to withhold.

(2) Coordination with nonrecognition provisions—(i) In general. A transferee shall not be required to withhold under section 1445(a) with respect to the transfer of a U.S. real property interest if—
(A) The transferor notifies the transferee, in the manner described in paragraph (d)(2)(iii) of this section, that by reason of the operation of a nonrecognition provision of the Internal Revenue Code or the provisions of any United States treaty the transferor is not required to recognize any gain or loss with respect to the transfer; and

(B) By the 10th day after the date of the transfer the transferee provides a copy of the transferor’s notice to the Director, Foreign Operations District, 1325 K St. NW, Washington, DC 20225, together with a cover letter setting forth the name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the transferee providing the notice to the Service.

The rule of this paragraph (c)(2)(i) is subject to the exceptions set forth in paragraph (c)(2)(ii). For purposes of this paragraph (c)(2) a nonrecognition provision is any provision of the Internal Revenue Code for not recognizing gain or loss.

(ii) Exceptions. A transferee may not rely upon the rule of paragraph (c)(2)(i) of this section, and must therefore withhold under section 1445(a) with respect to the transfer of a U.S. real property interest, if either:

(A) The transferee and transferor are related persons within the meaning of §1.897-1(i);

(B) The transferor qualifies for nonrecognition treatment with respect to part, but not all, of the gain realized by the transferor upon the transfer; or

(C) The transferee knows or has reason to know that the transferor is not entitled to the nonrecognition treatment claimed by the transferor.

In any of the above circumstances the transferee or transferor may request a withholding certificate from the Internal Revenue Service pursuant to the rules of §1.1445-3T.

(iii) Notice of nonrecognition treatment. No particular form is required for a transferor’s notice to a transferee that it is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury, by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labelled to correspond with the letter set forth below:

(A) A statement that the document submitted constitutes a notice of a nonrecognition transfer pursuant to the requirements of §1.1445-2T(d)(2);

(B) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;

(C) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;

(D) A brief description of the transfer;

(E) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

(iv) Transitional rule. Solely for purposes of the exemption from withholding provided by this paragraph (d)(2), prior to the effective date of a Treasury decision under section 897(d) and (e) the applicability of a nonrecognition provision shall be determined without regard to the effect of section 897(d) or (e) upon a particular transaction. Until such a Treasury decision becomes effective, a transferor to whom the exceptions of paragraph (c)(2)(ii) of this section do not apply may therefore provide the notice described in paragraph (d)(2)(iii) if he would qualify for nonrecognition treatment with respect to the transfer without regard to the effect of section 897(d) or (e).

(3) Special procedural rules applicable to foreclosures—(i) Amount to be withheld. A transferee that acquires a U.S. real property interest pursuant to a repossession or foreclosure on such property under a mortgage, security agreement, deed of trust, or other instrument securing a debt shall be required to withhold tax under section 1445(a) at the time of the repossession or foreclosure. However, if such transferee complies with the requirements of this paragraph (d)(3), then the amount required to be withheld shall equal the lesser of—

(A) 10 percent of the amount realized by the debtor/transferor upon the transfer; or

(B) The excess of the amount realized by the debtor/transferor (if any) over the debts secured by the property at the time of the foreclosure.

Amounts so withheld shall be reported and paid over as provided in §1.1445-1T(b). The special procedural rules of this paragraph (d)(3) shall not apply to transfers pursuant to the issuance of a deed in lieu of foreclosure. A withholding certificate may be sought under the rules of §1.1445-37 with respect to such transfers.

(ii) Notice to be given to Internal Revenue Service. A transferee that in reliance upon the rules of this paragraph (d)(3) fails to withhold or withholds a reduced amount with respect to the acquisition of a U.S. real property interest from a foreign person pursuant to a repossession or foreclosure must, by the 10th day after such acquisition, provide a notice thereof to the Director of the Foreign Operations District, 1325 K St. NW, Washington, D.C. 20225.

(Filing such a notice shall not relieve a creditor or any obligation it may have to file a notice pursuant to section 6050J and regulations thereunder). No particular form is necessary for the notice of repossession of foreclosure, but the following information must be set forth in paragraphs labelled to correspond with the letters set forth below:

(A) A statement that the document submitted constitutes a notice of repossession or foreclosure pursuant to §1.1445-2T(d)(3);

(B) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the person that acquired the property in the repossession or foreclosure;

(C) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the debtor/transferor from which the property was acquired;

(D) The date of the repossession or foreclosure;

(E) The amount of the debt secured by the transferred property; and

(F) The most recent assessed value of the transferred property for local real property tax purposes, or other estimate of the fair market value of the transferred property.

(iii) Requirements not applicable. A transferee is not required to withhold tax or provide notice pursuant to the rules of this paragraph (d)(3) if no substantive withholding liability applies to the transfer of the property for the debtor/transferor. For example, if the debtor/transferor provides the transferee with a certification of non-foreign status pursuant to paragraph (b) of this section, then no substantive withholding liability would exist with respect to the acquisition of the property from the debtor/transferor. In such a case, no withholding of tax or notice to the IRS is required of the transferee with respect to the repossession of foreclosure.

(iv) Anti-abuse rule. If a U.S. real property interest is transferred in repossession or foreclosure for a principal purpose of avoiding the requirements of section 1445(a), then the provisions of this paragraph (d)(3) shall not apply to the transfer and the creditor shall be fully liable for any failure to
withhold with respect to the transfer. A principal purpose of avoiding section 1445(a) shall be presumed if—

(A) The creditor’s security interest in the property did not raise in connection with the debtor/transferor’s acquisition, improvement, or maintenance of the property; and

(B) The total amount of all debts secured by the property exceeds 90 percent of the fair market value of the property.

However, the presumption created by the previous sentence may be rebutted by evidence establishing that the avoidance of section 1445(a) was not a principal purpose of the transaction.

(4) Installment payments. A transferee of a U.S. real property interest is not required to withhold under section 1445 when making installment payments on an obligation arising out of a disposition that takes place before January 1, 1985. With respect to dispositions that take place after December 31, 1984, the transferee shall be required to satisfy its entire withholding obligation out of the initial installment payment. Thereafter, no withholding is required upon further installment payments on an obligation arising out of the transfer. A transferee that is unable to satisfy its entire withholding obligation out of the first installment payment may request a withholding certificate pursuant to § 1.1445-3T.

(5) Acquisitions by governmental bodies. No withholding of tax is required under section 1445 with respect to any acquisition of property by the United States, a state or possession of the United States, a political subdivision thereof, or the District of Columbia.

(6) Foreign government—(1) As transferor. Pursuant to section 692 and regulations thereunder, a foreign government or international organization that acquires a U.S. real property interest in a commercial activity may be required to withhold pursuant to withholding certificate (temporary). In general. Withholding under section 1445(a) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this section. A withholding certificate may be issued by the Service in cases where reduced withholding is appropriate (see paragraph (c) of this section), where the transferor is exempt from U.S. tax (see paragraph (d) of this section), or where an agreement for the payment of tax is entered into with the Service (see paragraph (e) of this section). A withholding certificate that is obtained prior to a transfer notifies the transferee that no withholding is required, or that reduced withholding is required. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to paragraph (f) of this section. Either a transferee or a transferor may apply for a withholding certificate. The Internal Revenue Service will act upon an application not later than the 60th day after receipt. However, in the case of an application for a certificate based on non-conforming security under paragraph (e)(3)(v) of this section, and in unusually complicated cases, the Service may be unable to provide a final withholding certificate by the 60th day. In such a case the Service will notify the applicant, by the 45th day after receipt of the application, that additional processing time will be necessary. The Service’s notice may request additional information or explanation concerning particular aspects of the application, and will provide a target date for final action (contingent upon the applicant’s timely submission of any requested information). A withholding certificate issued pursuant to the provisions of this section serves to fulfill the requirements of section 1445(b)(4) concerning qualifying statements, section 1445(c)(1) concerning the transferor’s maximum tax liability, or section 1445(c)(2) concerning the Secretary’s authority to prescribe reduced withholding.

(2) Parties to the transaction. The application must set forth the name, address, and identifying number (if any) of the person submitting the application (specifying whether that person is the transferee or transferor), and the name, address, and identifying number (if any) of other parties to the transaction.

(3) Real property interest to be transferred. The application must set forth information concerning the U.S. real property interest with respect to which the withholding certificate is sought, including the type of interest, the contract price, and, in the case of an interest in real property, its location and general description, or in the case of an interest in a U.S. real property holding corporation, the class or type and amount of the interest.

(4) Basis for certificate—(1) Reduced withholding. If a withholding certificate is sought on the basis of a claim that reduced withholding is appropriate, the application must include:

(A) A calculation of the maximum tax that may be imposed on the disposition in accordance with paragraph (e)(3)(ii) of this section, together with a copy of the relevant contract and depreciation schedules (or other evidence that confirms the contract price and adjusted basis of the property) and together with evidence that supports any claimed
adjustment to the maximum tax on the disposition;

(B) A calculation of the transferor's unsatisfied withholding liability, or evidence supporting the claim that no such liability exists, in accordance with paragraph (c)(3) of this section; and

(C) In the case of a request for a special reduction of withholding pursuant to paragraph (c)(4) of this section, a statement of law and facts in support of the request. In this regard, see paragraph (d) of this section.

(iii) Agreement. If a withholding certificate is sought on the basis of an agreement for the payment of tax, the application must include a signed copy of the agreement approved by the applicant and a copy of the settlement instrument (if any) proposed by the applicant. In this regard, see paragraph (d) of this section.

(iv) A copy of the non-foreign certification furnished by the person from whom the subject or predecessor real property interest was acquired, executed at the time of that acquisition;

(v) A copy of the Form 8288 that was filed by the transferor, and proof of payment of the amount shown due thereon, with respect to the transferor's acquisition of the subject or predecessor real property interest.

(vi) A copy of a withholding certificate with respect to the transferor's acquisition of the subject or predecessor real property interest, plus a copy of Form 8288 and proof of payment with respect to any withholding required under that certificate.

(D) A calculation of the transferor's unsatisfied withholding liability as determined under paragraph (c)(2) of this section, and

(E) Evidence that the transferor purchased the subject or predecessor real property for $300,000 or less, and a statement, signed by the transferor under penalties of perjury, that the transferor purchased the property for use as a residence within the meaning of §1.1445-2T(d)(1);

(F) Evidence that the person from whom the transferor acquired the subject or predecessor U.S. real property interest fully paid any tax imposed on that transaction pursuant to section 897;

(G) A copy of a notice of nonrecognition treatment provided to the transferor pursuant to §1.1445-2T(d)(2) by the person from whom the transferor acquired the subject or predecessor U.S. real property interest; and

(H) A statement, signed by the transferor under penalties of perjury, setting forth the facts and circumstances that supported the transferor's conclusion that no withholding was required under section 1445(a) with respect to the transferor's acquisition of the subject or predecessor real property interest.

(A) Evidence that the transferor acquired the subject or predecessor real property interest prior to January 1, 1985.

(B) A copy of the Form 8288 that was filed by the transferor, and proof of payment of the amount shown due thereon, with respect to the transferor's acquisition of the subject or predecessor real property interest;

(C) A copy of a withholding certificate with respect to the transferor's acquisition of the subject or predecessor U.S. real property interest; and

(D) A copy of the non-foreign certification furnished by the person from whom the subject or predecessor U.S. real property interest was acquired, executed at the time of that acquisition;

(E) Evidence that the transferor purchased the subject or predecessor real property for $300,000 or less, and a statement, signed by the transferor under penalties of perjury, that the transferor purchased the property for use as a residence within the meaning of §1.1445-2T(d)(1);

(F) Evidence that the person from whom the transferor acquired the subject or predecessor U.S. real property interest fully paid any tax imposed on that transaction pursuant to section 897;

(G) A copy of a notice of nonrecognition treatment provided to the transferor pursuant to §1.1445-2T(d)(2) by the person from whom the transferor acquired the subject or predecessor U.S. real property interest; and

(H) A statement, signed by the transferor under penalties of perjury, setting forth the facts and circumstances that supported the transferor's conclusion that no withholding was required under section 1445(a) with respect to the transferor's acquisition of the subject or predecessor real property interest.
statement of law and facts in support of the request. That statement must explain why the transferor is unable to enter into an agreement for the payment of tax pursuant to paragraph (e) of this section.

(2) *Transferee's exemption from withholding.* The Internal Revenue Service will issue a withholding certificate that excuses all withholding by a transferee if it is established that:

(i) *The transferor's gain from the disposition of the subject U.S. real property interest will be exempt from withholding.*

(ii) *The transferor has no unsatisfied withholding liability.*

For the available exemptions, see paragraph (d)(2) of this section. The transferor's unsatisfied withholding liability shall be determined in accordance with the provisions of paragraph (c)(3) of this section. A transferor that is entitled to a reduction (rather than an exemption) from U.S. tax may obtain a withholding certificate that excuses all withholding pursuant to this paragraph (e)(2).

(2) *Available exemptions.* A transferor's gain from the disposition of a U.S. real property interest may be exempt from U.S. tax because either:

(i) *The transferor is an integral part or owned by a foreign government and the disposition of the subject property is not a commercial activity, as determined pursuant to section 892 and the regulations thereunder;* or

(ii) *The transferor has been granted a certificate of nonrecognition by the Secretary of the Treasury.*

(3) *Major types of security.*

(i) *In general.* The following are the major types of security acceptable to the Service. Further details with respect to the terms and conditions of each type may be specified by Revenue Procedure.

(ii) *Bond with surety or guarantor.* The Service may accept as security with respect to a transferor's tax liability a bond that is executed with a satisfactory surety or guarantor. Only the following persons may act as surety or guarantor for this purpose:

(A) A surety company holding a certificate of authority from the Secretary of the Treasury, as acceptable surety on Federal bonds, as listed in Treasury Department Circular No. 870, published annually in the Federal Register on the first working day of July.

(B) A person that is engaged within or without the United States in the conduct of an insurance business that is subject to U.S. or foreign local or national regulation, if that person is otherwise acceptable to the Service.

(iii) *Bond with collateral.* The Service may accept as security with respect to a transferor's tax liability a bond that is secured by acceptable collateral. All collateral must be deposited with a responsible financial institution acting as escrow agent, or, in the Service's discretion, with the Service. Only the following types of collateral are acceptable:

(A) Bonds, notes, or other public debt obligations of the United States, in accordance with the rules of 31 CFR Part 235; and

(B) A letter of credit issued by a bank, banking, or similar business under the principles of § 1.864-4(c)(5) and subject to U.S. or foreign local or national regulation of such business.

(4) *Letter of credit.* The Service may accept as security with respect to a transferor's tax liability an irrevocable letter of credit. The Service may accept a letter of credit issued by an entity acceptable to the Service that is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of § 1.864-4(c)(5) and subject to U.S. or foreign local or national regulation of such business. However, the Service will accept a letter of credit from an entity that is not engaged in trade or business in the United States only if such letter may be drawn on an eligible bank within the United States.

(5) *Guarantees and other nonconforming security.*

(A) Guarantee. The Service may in its discretion accept as security with respect to a transferor's tax liability the applicant's guarantee that it will pay such liability. The Service will in general accept such a guarantee only from a corporation, foreign or domestic, any class of stock of which is regularly traded on an established securities market on the date of the transfer.

(B) *Other forms of security.* The Service may in unusual circumstances and at its discretion accept any form of security that it finds to be adequate. An application for a withholding certificate that proposes a form of security that does not conform with any of the preferred types set forth in paragraph (e)(2)(iii) through (iv) of this section or (C) A person that is engaged within or without the United States in the conduct of an insurance business that is subject to U.S. or foreign local or national regulation, if that person is otherwise acceptable to the Service.
any relevant Revenue Procedure must include:

(1) A detailed statement of the facts and circumstances supporting the use of the proposed form of security, and

(2) A memorandum of law concerning the validity and enforceability of the proposed form of security.

(4) Terms of security instrument. Any security instrument that is furnished pursuant to this section must provide that—

(i) The amount of each deposit of estimated tax that will be required with respect to the gain realized on the subject disposition may be collected by levy upon the security as of the date following the date on which each such deposit is due (unless such deposit is timely made);

(ii) The entire amount of the liability may be collected by levy upon the security at any time during the nine months following the date on which the payment of tax with respect to the subject disposition is due, subject to release of the security upon the full payment of the tax and any interest and penalties due. If the transferee requests an extension of time to file a return with respect to the disposition, then the Director may require that the term of the security instrument be extended until the date that is three months after the filing deadline as extended.

(f) Early refund of overwithheld amounts. If a transferee receives a withholding certificate pursuant to this section, and an amount greater than that specified in the certificate was withheld by the transferee, then pursuant to the rules of this paragraph (f) the transferee may apply for a refund (without interest) of the excess amount prior to the date on which the transferee's tax return could otherwise be filed. (Any interest payable on refunds issued after the filing of a tax return shall be determined in accordance with the provisions of section 6611 and regulations thereunder.) An application for an early refund must be addressed to the Director, Foreign Operations District, 1325 K St. NW., Washington, D.C. 20225. No particular form is required for the application, but the following information must be set forth in separate paragraphs numbered to correspond with the number given below:

(1) Name, address, and identifying number (if any) of the transferee seeking the refund;

(2) Amount required to be withheld pursuant to withholding certificate issued by Internal Revenue Service;

(3) Amount withheld by transferee (attach a copy of Form 8280-A stamped by IRS pursuant to § 1.1445–4T(c));

(4) Amount to be refunded to transferee. An application for an early refund cannot be processed unless the required copy of Form 8280–A is attached to the application. If an application for a withholding certificate based upon the transferor’s maximum tax liability is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund within the time limits set forth in paragraph (a) of this section.

§ 1.1445–4T Liability of agents (temporary).

(a) Duty to provide notice of false certification or statement to transferee. A transferee’s or transferee’s agent must provide notice to the transferee if either—

(1) The transferee is furnished with a non-U.S. property interest statement pursuant to § 1.1445–5T(c)(3) and the agent knows that the statement is false; or

(2) The transferee is furnished with a non-foreign certification pursuant to § 1.1445–27T(b)(2) and either (i) the agent knows that the certification is false, or (ii) the agent represents a transferor that is a foreign corporation.

(b) Duty to provide notice of false certification or statement to entity or fiduciary. A transferee’s or transferee’s agent must provide notice to an entity or fiduciary if either—

(1) The entity or fiduciary is furnished with a non-U.S. property interest statement pursuant to § 1.1445–5T(c)(3) and the agent knows that such statement is false; or

(2) The entity or fiduciary is furnished with a non-foreign certification pursuant to § 1.1445–27T(b)(3) and the agent knows that such statement is false; or

(3) The entity or fiduciary is furnished with a non-foreign certification pursuant to § 1.1445–27T(b)(3) and the agent knows that such statement is false; or

(4) The entity or fiduciary is furnished with a non-foreign certification pursuant to § 1.1445–27T(b)(3) and the agent knows that such statement is false; or

(c) Procedural requirements—(1) Notice to transferee, entity, or fiduciary. An agent who is required by this section to provide notice must do so in writing as soon as possible after learning of the false certification or statement, but not later than the date of the transfer (prior to the transferee’s payment of consideration). If an agent first learns of a false certification or statement after the date of the transfer, notice must be given by the third day following that discovery. The notice must state that the certification or statement is false and may not be relied upon. The notice must also explain the possible consequences to the recipient of a failure to withhold. The notice need not disclose the information on which the agent’s statement is based. The following is an example of an acceptable notice: “This is to notify you that you may be required to withhold tax in connection with [describe transaction]. You have been provided with a certification of non-foreign status [or a non-U.S. real property interest statement] in connection with that transaction. I have learned that that document is false. Therefore, you may not rely upon it as a basis for failing to withhold under section 1445 of the Internal Revenue Code. Section 1445 provides that any person who acquires a U.S. real property interest from a foreign person must withhold a tax equal to 10 percent of the total purchase price. (The term “U.S. real property interest” includes real property, stock in U.S. corporations whose assets are primarily real property, and some personal property associated with realty.) Any person who is required to withhold but fails to do so can be held liable for the tax. Thus, if you do not withhold the 10 percent tax from the total that you pay on this transaction, you could be required to pay the tax yourself, if what you are acquiring is a U.S. real property interest and the transferor is a foreign person. Tax that is withheld must be promptly paid over to the IRS using Form 8280. For further information see sections 897 and 1445 of the Internal Revenue Code and the related regulations.”

(2) Notice to be filed with IRS. An agent who is required by paragraph (a) or (b) of this section to provide notice to a transferee, entity, or fiduciary must furnish a copy of that notice to the Internal Revenue Service by the date on which the notice is required to be given to the transferee, entity, or fiduciary. The copy of the notice must be delivered to the Director, Foreign Operations District, 1325 K St. NW., Washington, D.C. 20225, and must be accompanied by a cover letter stating that the copy is being filed pursuant to the requirements of this § 1.1445–4T(c).

(d) Effect on recipient. A transferee, entity, or fiduciary that receives a notice pursuant to this section prior to the date of the transfer from any agent of the transferee or transferee may not rely upon the subject certification or statement for purposes of excusing withholding pursuant to § 1.1445–2T or § 1.1445–5T. Therefore, the recipient of a notice may be held liable for any failure to deduct and withhold tax under section 1445 as if such certification or statement had never been given. For special rules concerning the effect of the receipt of a notice after the date of the
(e) Failure to provide notice. Any agent who is required to provide notice but who fails to do so in the manner required by paragraph (a) or (b) of this section shall be held liable for the tax required by paragraph (a) or (b) of §1.1445-5T(c), (d) and (e).

§1.1445-5ST Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates (temporary).

(a) Purpose and scope. This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity’s disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity.

(i) In general. For purposes of this section, the term “transferor’s agent” and “transferee’s agent” mean any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person’s agent) relating to the transaction; or

(ii) In settling the transaction.

(2) Transactions subject to section 1445(e). In the case of transactions subject to section 1445(e), the following definitions apply.

(i) The term “transferor’s agent” means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(ii) The term “transferee’s agent” means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(3) Exclusion of settlement officers and clerical personnel. For purposes of this section, a person shall not be treated as a transferor’s agent or transferee’s agent with respect to any transaction solely because such person performs one or more of the following activities:

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction; or

(iii) Typing, copying, and other clerical tasks.

§1.1445-5T Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates (temporary).

(a) Purpose and scope. This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity’s disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity.

(i) In general. For purposes of this section, the term “transferor’s agent” and “transferee’s agent” mean any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person’s agent) relating to the transaction; or

(ii) In settling the transaction.

(2) Transactions subject to section 1445(e). In the case of transactions subject to section 1445(e), the following definitions apply.

(i) The term “transferor’s agent” means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(ii) The term “transferee’s agent” means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(3) Exclusion of settlement officers and clerical personnel. For purposes of this section, a person shall not be treated as a transferor’s agent or transferee’s agent with respect to any transaction solely because such person performs one or more of the following activities:

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction; or

(iii) Typing, copying, and other clerical tasks.

§1.1445-5T Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates (temporary).

(a) Purpose and scope. This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity’s disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity.

(i) In general. For purposes of this section, the term “transferor’s agent” and “transferee’s agent” mean any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person’s agent) relating to the transaction; or

(ii) In settling the transaction.

(2) Transactions subject to section 1445(e). In the case of transactions subject to section 1445(e), the following definitions apply.

(i) The term “transferor’s agent” means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(ii) The term “transferee’s agent” means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(3) Exclusion of settlement officers and clerical personnel. For purposes of this section, a person shall not be treated as a transferor’s agent or transferee’s agent with respect to any transaction solely because such person performs one or more of the following activities:

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction; or

(iii) Typing, copying, and other clerical tasks.

§1.1445-5T Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates (temporary).

(a) Purpose and scope. This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity’s disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity.

(i) In general. For purposes of this section, the term “transferor’s agent” and “transferee’s agent” mean any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person’s agent) relating to the transaction; or

(ii) In settling the transaction.

(2) Transactions subject to section 1445(e). In the case of transactions subject to section 1445(e), the following definitions apply.

(i) The term “transferor’s agent” means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(ii) The term “transferee’s agent” means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(3) Exclusion of settlement officers and clerical personnel. For purposes of this section, a person shall not be treated as a transferor’s agent or transferee’s agent with respect to any transaction solely because such person performs one or more of the following activities:

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction; or

(iii) Typing, copying, and other clerical tasks.

§1.1445-5T Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates (temporary).

(a) Purpose and scope. This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity’s disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity.

(i) In general. For purposes of this section, the term “transferor’s agent” and “transferee’s agent” mean any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person’s agent) relating to the transaction; or

(ii) In settling the transaction.

(2) Transactions subject to section 1445(e). In the case of transactions subject to section 1445(e), the following definitions apply.

(i) The term “transferor’s agent” means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(ii) The term “transferee’s agent” means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e)(1), (2), (3), or (4).

(3) Exclusion of settlement officers and clerical personnel. For purposes of this section, a person shall not be treated as a transferor’s agent or transferee’s agent with respect to any transaction solely because such person performs one or more of the following activities:

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction; or

(iii) Typing, copying, and other clerical tasks.
provisions of paragraphs (c) and (e) of this section, an entity or fiduciary is required to withhold with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. For purposes of determining whether a holder of an interest is a foreign person, an entity or fiduciary may rely upon a certification of non-foreign status provided by that person in accordance with paragraph (b)(3)(ii) of this section. Except to the extent provided in paragraph (b)(3)(ii) of this section, such a certification excuses the entity or fiduciary from any liability otherwise imposed pursuant to section 1445 (e) and regulations thereunder. However, no obligation is imposed upon an entity or fiduciary to obtain certifications from interest-holders; an entity or fiduciary may instead rely upon other means to ascertain the non-foreign status of an interest-holder. If the entity or fiduciary does rely upon other means but the interest-holder proves, in fact, to be a foreign person, then the entity or fiduciary is subject to any liability imposed pursuant to section 1445 and regulations thereunder.

(ii) Certification of non-foreign status—(A) General. For purposes of this section, an entity or fiduciary may treat any holder of an interest in the entity as a foreign person if that interest-holder furnishes to the entity or fiduciary a certification stating that the interest-holder is not a resident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, but not a resident alien individual. In this regard, see §1.6038-1(k).

(B) Procedural rules. An interest-holder’s certification of non-foreign status must—

(1) State that the interest-holder is not a foreign person;

(2) Set forth the interest-holder’s name, identifying number, home address (in the case of an individual) or office address (in the case of an entity), and place of incorporation (in the case of a corporation); and

(3) Be signed under penalties of perjury.

Pursuant to §1.897-1(p), an individual’s identifying number is the individual’s Social Security number and any other person’s identifying number is its U.S. employer identification number. The certification must be signed by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b)(3)(ii)(B), nor is any particular language required, so long as the document meets the requirements of this paragraph. Samples of acceptable certifications are provided in paragraph (b)(3)(ii)(D) of this section. An entity or fiduciary may rely upon a certification pursuant to this paragraph (b)(3)(ii)(B) for a period of two calendar years following the close of the calendar year in which the certification was given. An entity that obtains and relies upon a certification must retain that certification with its books and records for a period of three calendar years following the close of the last calendar year in which the entity relied upon the certification.

(C) Foreign corporation that has made an election under section 887(j). A foreign corporation that has made a valid election under section 887(j) to be treated as a domestic corporation for purposes of section 887 may provide a certification of non-foreign status pursuant to this paragraph (b)(3)(ii). However, an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to §1.897-3(d)(4).

(D) Sample certifications—(1) Individual interest-holder. “Under section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform [name of entity] that no withholding is required with respect to [name of interest-holder]’s interest in it, the undersigned hereby certifies the following on behalf of [name of interest-holder]:

1. [Name of interest-holder] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. [Name of interest-holder]’s U.S. employer identification number is
date and place of incorporation (if applicable)

3. [Name of interest-holder]’s office address is

[Signature and date]”

(2) Entity interest-holder. “Under section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform [name of entity] that no withholding is required with respect to [name of interest-holder]’s interest in it, the undersigned hereby certifies the following on behalf of [name of interest-holder]:

1. [Name of interest-holder] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. [Name of interest-holder]’s U.S. employer identification number is
date and place of incorporation (if applicable)

3. [Name of interest-holder]’s office address is

[Signature and date]”

(iii) Reliance upon certification not permitted. An entity or fiduciary may not rely upon an interest-holder’s certification of non-foreign status if, prior to or at the time of the transfer with respect to which withholding would be required, the entity or fiduciary either—

(A) Has actual knowledge that the certification is false;

(B) Has received a notice that the certification is false from a transferor’s or transferee’s agent, pursuant to §1.1445-4T; or

(C) Has received from a corporation that it knows to be a foreign corporation a certification that does not have attached to it a copy of the IRS acknowledgment of the corporation’s election under section 887(j), as required by paragraphs (b)(3)(ii)(C) of this section. Such an entity’s or fiduciary’s withholding obligations shall apply as if a statement had never been given, and
such an entity or fiduciary may be held fully liable pursuant to § 1.1445-2T(e) for any failure to withhold. For special rules concerning an entity’s belated receipt of a notice concerning a false certification, see paragraphs (c)(2)(ii) and (e)(2)(iii) of this section.

(4) Property transferred not a U.S. real property interest—(i) In general. Pursuant to the provisions of paragraphs (c) and (d) of this section, an entity or fiduciary is required to withhold with respect to certain transfers of property, if the property transferred is a U.S. real property interest. In addition, taxable distributions of U.S. real property interests by domestic or foreign partnerships, trusts, and estates will be subject to withholding pursuant to section 1445(e)(4) and paragraph (f) of this section after publication of a Treasury decision under sections 897(e)(2) and (g). As defined in section 897(c) and § 1.1445-6T, a U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property.

This paragraph (b)(4) provides rules pursuant to which an entity (or fiduciary thereof) that transfers an interest in a U.S. corporation may determine that withholding is not required because the interest transferred is not a U.S. real property interest. To determine whether an interest in tangible property constitutes a U.S. real property interest the transfer of which would be subject to withholding, see § 1.897-1 (b) and (e).

(ii) Interests in publicly traded entities: Withholding is not required under paragraph (c) or (d) of this section upon an entity’s transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Similarly, no withholding is required under paragraph (c) or (d) of this section upon an entity’s transfer of an interest in a corporation that is regularly traded on an established securities market.

Such an entity’s or fiduciary’s withholding obligations shall apply as if a statement had never been given, and such an entity or fiduciary may be held fully liable pursuant to § 1.1445-1T(e) for any failure to withhold. For special rules concerning an entity’s belated receipt of a notice concerning a false statement, see paragraphs (c)(2)(ii) and (e)(2)(i) of this section.

(5) Reporting and paying over of withheld amounts—(i) In general. An entity or fiduciary must report and pay over to the Internal Revenue Service any tax withheld pursuant to section 1445(e) and this section by the 10th day after the date of the transfer (as defined in § 1.1445-1T(b)(7)). Forms 8283 and 8283-A are used for this purpose and must be filed with the Internal Revenue Service Center, Philadelphia, PA 19055. The contents of Forms 8283 and 8283-A are described in § 1.1445-1T(d). Pursuant to section 7502 and regulations thereunder, the timely mailing of Forms 8283 and 8283-A by U.S. mail will be treated as their timely filing. Form 8283-A will be stamped by the Internal Revenue Service to show receipt, and a stamped copy will be mailed by the Service to the interest-holder, at the address shown on the form, for the interest-holder’s use. See paragraph (b)(7) of this section.

(ii) Pending application for withholding certificate—(A) In general. If on the date of the transfer an application for a withholding certificate is pending with the Internal Revenue Service, the entity or fiduciary must nevertheless withhold the amount required under section 1445(e) and the rules of this section. However, if the application was submitted not later than the 30th day prior to the date of the transfer, then the amount withheld need not be reported and paid over to the Internal Revenue Service until the 10th day following the Service’s final disposition of the application for a withholding certificate. For rules concerning the issuance of withholding certificates, see § 1.1445-6T.

(b) Transitional rules. If the date of a transfer is on or before January 31, 1935, and on the date of the transfer an application for a withholding certificate is pending with the Internal Revenue Service, the entity or fiduciary need to be withheld pursuant to the rules of this section need not be reported and paid over to the Service until the 10th day following the Service’s final determination with respect to the application for a withholding certificate. However, the rules of this paragraph (b)(5)(i)(B) shall not apply with respect to an application for a withholding certificate that is not submitted in good faith. An application shall be presumed to have been submitted in good faith if it complies with the requirements of § 1.1445-6T(b) concerning the information required to be submitted with an application.

(C) Anti-abuse rules. An entity or fiduciary that in reliance upon the rules of this paragraph (b)(5)(ii) fails to report and pay over amounts withheld by the 10th day following the date of the transfer, the entity or fiduciary that in reliance upon the rules of this paragraph (b)(5)(ii) fails to report and pay over amounts withheld by the 10th day following the date of the transfer, shall be subject to the payment of interest and penalties; if the relevant application for a withholding certificate was submitted for a principle purpose of delaying the payment to the IRS of the amount withheld. Interest and penalties shall be assessed on the amount that is ultimately paid over, with respect to the period between the 10th day after the date of the transfer and the date on which payment is made.

(g) Liability upon failure to withhold. Every person required to deduct and
withhold tax under section 1445(c) is made liable for that tax by section 1461. The tax may, therefore, be assessed against and collected from an entity or fiduciary that is required under this section to deduct and withhold tax but fails to do so. Such an entity or fiduciary may also be subject to criminal penalties under section 7202.

Responsible persons may be subject to a civil penalty under section 6672 equal to the amount that should have been withheld under section 1445(c). The tax may also be subject to criminal penalties under section 7202. Responsible persons may be subject to a civil penalty under section 6672 equal to the amount that should have been withheld under section 1445(c). The tax may also be subject to criminal penalties under section 7202.

(7) Effect of withholding by entity or fiduciary upon interest holder. The withholding of tax under section 1445(e) does not excuse a foreign person that is subject to U.S. tax by reason of the operation of section 897 from filing a U.S. tax return. Thus, Form 1040NR, 1041, or 1120F, as appropriate, must be filed, and any tax due must be paid, by the filing date otherwise applicable to such person or any extension thereof. The tax withheld with respect to the foreign person under section 1445(e) (as shown on Form 8288-A) shall be credited against the amount of income tax as computed in such return, but only if the stamped copy of Form 8288-A provided to the entity or fiduciary (under paragraph (b)(5) of this section) is attached to the return. If the amount withheld under section 1445(e) constitutes less than the full amount of the foreign person’s U.S. tax liability for that taxable year, then a payment of estimated tax may be required to be made pursuant to section 6154 or 6654 prior to the filing of the income tax return for that year. Alternatively, if the amount withheld under section 1445(e) exceeds the foreign person’s maximum tax liability with respect to the transaction (as reflected in a withholding certificate issued by the Internal Revenue Service pursuant to § 1.1445–6T), then the foreign person may seek an early refund of the excess pursuant to § 1.1445–6T(f). A foreign person that takes gain into account in accordance with the provisions of section 453 shall not be entitled to a refund of the amount withheld, unless a withholding certificate providing for such a refund is obtained pursuant to § 1.1445–6T.

(b) Effective dates—(1) Partnership, trust, and estate dispositions of U.S. real property interests. The provisions of section 1445(e)(1) and paragraph (c) of this section, requiring withholding upon certain dispositions of U.S. real property interests by foreign corporations, shall apply to dispositions made on or after January 1, 1985.

(iii) Distributions by certain domestic corporations to foreign shareholders. The provisions of section 1445(e)(3) and paragraph (e) of this section, requiring withholding upon distributions by U.S. real property holding corporations to foreign shareholders, shall apply to distributions made on or after January 1, 1985.

(iv) Taxable distributions by domestic or foreign partnerships, trusts, and estates. The provisions of section 1445(e)(4), requiring withholding upon certain taxable distributions by domestic or foreign partnerships, trusts, and estates, shall apply to distributions made on or after the effective date of a Treasury decision under section 697(e)(2)(B)(ii) and (g).

(v) Dispositions of interests in partnerships, trusts, and estates. The provisions of section 1445(e)(5), requiring withholding upon certain dispositions of interests in partnerships, trusts, and estates, shall apply to distributions made on or after the effective date of a Treasury decision under section 697(e)(2)(B)(i) and (g).

(c) Dispositions of U.S. real property interests by domestic partnerships, trusts, and estates—(1) Withholding required—(i) In general. If a domestic partnership, trust, or estate disposes of a U.S. real property interest and any partner, beneficiary, or owner of the entity is a foreign person, then the partnership or the trustee, executor, or equivalent fiduciary of the trust or estate must withhold tax with respect to each such foreign person in accordance with the provisions of subdivision (ii), (iii), or (iv) of this paragraph (c)(1) (as applicable). The withholding obligation imposed by this paragraph (c) applies to the fiduciary of a trust even if the grantor of the trust or another person is treated as the owner of the trust or any portion thereof for purposes of the Internal Revenue Code. Thus, the withholding obligation imposed by this paragraph (c) applies to the trustor of a land trust or similar arrangement, even if such a trustor is not ordinarily treated under the applicable provisions of local law as a true fiduciary.

(ii) Disposition by partnership. The partnership must withhold a tax equal to 10 percent of each foreign partner’s distributive share of the total amount realized by the partnership upon the disposition of the U.S. real property interest. Such distributive share of the total amount realized must be determined pursuant to the principles of section 704 and the regulations thereunder.

(iii) Disposition by trust or estate. The trustee, executor, or equivalent fiduciary of the trust or estate must withhold a tax calculated as follows:

\[
\left( \frac{\text{Total amount realized}}{\text{Beneficiary’s share of gain}} \times \frac{\text{Total gain on disposition}}{100} \right) \times 10\%
\]

For purposes of this calculation, a “beneficiary’s share of gain” is the amount of gain realized upon the disposition that would be included, under the provisions of section 671, in the gross income of a beneficiary that is a foreign person, under the provisions of § 1.652(a)–1 or 1.662(a)–1, if the trust had no other income and incurred no other expenses during the taxable year. The “total gain on disposition” is the amount of gain realized by the trust or estate upon the disposition of the U.S. real property interest.

(iv) Disposition by grantor trust. The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part I of subchapter J (sections 671 through 679) must withhold a tax calculated as follows:

\[
\left( \frac{\text{Amount realized}}{\text{Owner’s share of gain}} \times \frac{\text{Total gain on disposition}}{100} \right) \times 10\%
\]

For purposes of this calculation, the “owner’s share of gain” is the amount of gain realized upon the disposition that would be included, under the provisions of section 671, in the gross income of a grantor or other person treated as an owner that is a foreign person, if the trust had no other income and incurred
The "total gain on disposition" is with respect to the disposition of a U.S. real property interest. 

(2) Withholding not required under paragraph (c)—(i) Transactions covered elsewhere. No withholding is required under this paragraph (c) with respect to the distribution of a U.S. real property interest by a partnership, trust, or estate. Such distributions shall be subject to withholding under section 1445(e)(4) and paragraph (i) of this section after publication of a Treasury decision under section 897(e)(2) and (g). See paragraph (b)(3)(v) of this section. Withholding with respect to the disposition of an interest in a partnership, trust, or estate shall be required only as provided in section 1445(e)(4) and paragraph (g) of this section. No withholding is at this time required under those provisions. See paragraph (b)(3)(v) of this section. (ii) Intention not a foreign person—(A) In general. A domestic partnership, trust, or estate that disposes of a U.S. real property interest shall not be required to withhold with respect to any partner or beneficiary that it determines, pursuant to the rules of paragraph (b)(3) of this section, not to be a foreign person. (B) Belated notice of false certification. If after the date of the transfer a partnership or fiduciary learns that a partner’s or beneficiary’s certification of non-foreign status is false, then that partnership or fiduciary shall be required to withhold, with respect to each foreign partner or beneficiary, the lesser of— (1) The amount otherwise required to be withheld under the rules of this paragraph (c), or (2) An amount equal to that partner’s or beneficiary’s remaining interests in the income or assets of the partnership, trust, or estate. (C) Amounts so withheld must be reported and paid over by the 15th day following the date on which the partnership or fiduciary learns that the certification is false. For rules concerning the notification of false statements that may be required to be given to partnerships or fiduciaries, see § 1.1445-4T(b). (iii) Withholding certificate. No withholding is required under this paragraph (c) with respect to the transfer of a U.S. real property interest if the Internal Revenue Service issues a withholding certificate that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445-4T. (iv) Nonrecognition transactions. For special rules concerning transactions entitled to nonrecognition of gain or loss, see paragraph (b)(2) of this section. (3) Large partnerships or trusts—(i) In general. In the case of a partnership or trust that has more than 100 partners or beneficiaries, the requirements of this section shall be subject to the special rules provided by this paragraph (c). (ii) Transitional rules for determinations of non-foreign status—(A) In general. A partnership or the fiduciary of a trust that has more than 100 partners or beneficiaries may for purposes of this paragraph (c) presume that a partner or beneficiary that has a mailing address in the United States is a non-foreign person. This presumption may be relied upon only with respect to transfers that take place prior to January 1, 1985. However, this presumption may not be relied upon with respect to a partner or beneficiary if the partnership or fiduciary has actual knowledge that the partner or beneficiary is a foreign person. (B) Publicly traded entities. If any class of beneficial interests in a partnership or trust is regularly traded on an established securities market, then prior to January 1, 1996, that partnership or fiduciary may presume that— (1) Each partner or beneficiary of record is the beneficial owner of that interest; and (2) Each such partner or beneficiary that has a mailing address in the United States is a non-foreign person. After December 31, 1983, such a partnership or fiduciary shall be subject to the withholding requirements otherwise imposed under this paragraph (e), with respect to each beneficial owner of an interest as the entity as a partner or beneficiary that is a foreign person. Such a partnership or fiduciary may obtain a certification of non-foreign status from each such beneficial owner to determine that withholding is not required with respect to such person. Obtaining such a certification will generally excuse the partnership or fiduciary from liability, under the rules of paragraph (b)(3) of this section. The partnership or fiduciary may also rely upon other means to ascertain the non-foreign status of a beneficial owner, but use of such other means will not excuse the partnership or fiduciary from liability if the beneficial owner is, in fact, a foreign person. If the partnership or fiduciary knows or has reason to believe that a partner or beneficiary of record is acting as a nominee for another person that is the beneficial owner of the interest, then by July 1, 1985, the partnership or fiduciary must provide a written notice to such nominee or possible nominee. Such notice must inform the nominee or possible nominee that unless a certification of non-foreign status is timely provided to the partnership or fiduciary for unless the partnership or fiduciary is otherwise satisfied that the beneficial owner of the interest is a non-foreign person the partnership or fiduciary will commence withholding with respect to such interest as of January 1, 1985. (iii) Election to withhold upon distribution—(A) In general. A partnership or the fiduciary of a trust that has more than 100 partners or beneficiaries may elect to withhold in accordance with the provisions of this paragraph (c)(3)(iii), in lieu of withholding in the manner required by paragraph (c)(1) of this section. Such a partnership or fiduciary may withhold tax upon the distribution to a foreign partner or beneficiary of any amount that under the rules of subdivision (B) of this paragraph (c)(3)(iii) is attributable to transfers of U.S. real property interests described in section 1445(e)(1) and this paragraph (c). The amount
required to be withheld shall be equal to—

(1) 20 percent of the amount attributable to 1445(e)(1) transfers in the case of a distribution to a partner or beneficiary that is an individual, partnership, trust, or estate; or

(2) 28 percent of the amount attributable to 1445(e)(1) transfers in the case of a distribution to a partner or beneficiary that is a corporation.

Amounts withheld pursuant to an election under this paragraph (c)(3)(iii) shall be reported and paid over as provided in paragraph (b)(6) of this section, and shall be credited against the tax liabilities of partners or beneficiaries of the entity as provided in paragraph (b)(7) of this section.

(B) Amounts attributable to 1445(e)(1) transfers. For purposes of this paragraph (c)(3)(iii), the amount of any distribution that is attributable to section 1445(e)(1) transfers shall be equal to the foreign partner's or beneficiary's proportionate share of the current balance of the entity's 1445(e)(2) account. An entity's 1445(e)(1) account shall be equal to—

(1) The total amount of gain realized by the entity upon all transfers described in section 1445(e)(1) carried out by the entity after the date of its election under this paragraph (c)(3)(iii); minus

(2) The total amount of all distributions by the entity upon which withholding was carried out with respect to foreign distributees pursuant to an election under this paragraph (c)(3)(iii).

(C) Procedural rules. An election under this paragraph (c)(3)(iii) may be made by filing a notice thereof with the Director, Foreign Operations District, 3325 K St. NW, Washington, DC 20225. The notice must be submitted by a general partner (in the case of a partnership) or trustee or equivalent fiduciary (in the case of a trust). The notice must set forth the name, office address, and identifying number of the partnership or fiduciary making the election, and, in the case of a partnership, must include the name, office address, and identifying number of the general partner submitting the election. An election under this paragraph (c)(3)(iii) may be revoked in a like manner.

(D) Publicly traded entities. For purposes of withholding pursuant to an election under this paragraph (c)(3)(iii), a partnership of the fiduciary of a trust, any class of beneficial interests in which is regularly traded on an established securities market, may determine the non-foreign status of partners or beneficiaries as of a closing date not more than 60 days prior to the date of the actual distribution.

(a) Treatment of REITs. For purposes of the withholding required under section 1445 prior to the distribution of a REIT, the board of directors shall be treated as the trustees of the trust for purposes of this section. In the case of a corporation that constitutes a REIT, the board of directors shall be treated as the trustees of the trust for purposes of this section. However, for purposes of the withholding required under section 1445, (a), (e)(4), and (e)(5), a REIT shall be treated as a trust only if the entity is in fact a trust. Thus, withholding may be required under section 1445(a)(1) with respect to transfers of interests in REITs that constitute U.S. real property interests under the rules of section 897.

(b) General. A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to the amount of gain recognized by the corporation upon the distribution multiplied by the maximum corporate income tax rate applicable to long-term capital gain, currently 28 percent. The amount of gain required to be recognized by the corporation must be determined pursuant to the rules of section 897 and any other applicable section. For special rules concerning the applicability of a nonrecognition provision to a distribution, see paragraph (b)(2) of this section. The withholding liability imposed by this paragraph (d) applies to the same taxpayer that owes the related substantive income tax liability pursuant to the operation of section 897. Only one such liability will be assessed and collected from a foreign corporation, but separate penalties for failures to comply with the two requirements may be assessed.

(i) Withholding not required—(1) Property distributed not a U.S. real property interest. No withholding is required under this paragraph (d) with respect to transfers of interests in a REIT, other than a publicly traded REIT, to a foreign person that holds an interest in the corporation that constitutes a REIT, as described in paragraph (d)(3)(iii) of this section.

(ii) The property is distributed either—

(A) In redemption of stock under section 302 or

(B) In liquidation of the corporation pursuant to the provisions of Part II of Subchapter C (sections 331 through 341).

For the treatment of a domestic corporation's transfer of a U.S. real property interest to a foreign interest-holder in a distribution to which section 301 applies, see sections 897(f), 1441, and 1442.

(ii) The property is distributed either—

(A) In redemption of stock under section 302 or

(B) In liquidation of the corporation pursuant to the provisions of Part II of Subchapter C (sections 331 through 341).
property interest if the corporation was a U.S. real property holding corporation at any time during the shorter of (A) the period in which the foreign person held the interest or (B) the previous five years (but not earlier than June 19, 1980). See section 897(c) and §§ 1.1487-1(c) and 1.1487-2 (b) and (h)(1)(iv). However, an interest in such a corporation ceases to be a U.S. real property interest after all of the U.S. real property interests held by the corporation itself are disposed of in transactions on which gain or loss is recognized. See section 897(c)(1)(B) and § 1.1487-2 (k). In turn, a U.S. real property holding corporation in the process of liquidation does not elect section 337 nonrecognition treatment upon its sale of all U.S. real property interests held by the corporation, and recognizes gain or loss upon such sales, interests in that corporation cease to be U.S. real property interests. Therefore, no withholding would be required with respect to any subsequent liquidating distribution to a foreign shareholder of property other than a U.S. real property interest.

(ii) Nonrecognition transactions. For special rules concerning the applicability of a nonrecognition provision to a distribution described in paragraph (e)(1) of this section, see paragraph (b)(2) of this section.

(iii) Interest-holder not a foreign person—(A) Determination. A domestic corporation shall not be required to withhold under this paragraph (e) with respect to a distribution of property to an entity or fiduciary that is not a foreign person. To determine whether a person is a foreign person, see §1.1445-6T. A domestic corporation that has made an election under section 897(i), see §1.1445-7T(d).

(iv) Withholding certificate. No withholding, or reduced withholding, is required under this paragraph (e) with respect to a domestic corporation’s distribution of property if the distributing corporation obtains a withholding certificate from the Internal Revenue Service that so provides. For rules concerning the issuance of withholding certificates, see §1.1445-6T.

(f) Taxable distributions by domestic or foreign partnerships, trusts, or estates. [Reserved]

(g) Dispositions of interests in partnerships, trusts, and estates. [Reserved]

§1.1445-6T Adjustments pursuant to withholding certificate of amount required to be withheld under section 1446(e) (temporary).

(a) Withholding certificate for purposes of section 1445(e)—(1) In general. Pursuant to the provisions of §1.1445-5T (c)(2)(iv), (d)(2)(ii), and (e)(2)(iv), withholding under section 1446(e) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this section. A withholding certificate may be issued in cases where adjusted withholding is appropriate (e.g., because of the applicability of a nonrecognition provision—see paragraph (e) of this section), where the relevant taxpayers are exempt from U.S. tax (see paragraph (d) of this section), or where an agreement for the payment of tax is entered into with the Service (see paragraph (e) of this section). A withholding certificate that is obtained prior to a transfer allows the entity or fiduciary to withhold a reduced amount or excuses withholding entirely. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to paragraph (f) of this section. Either an entity, a fiduciary, or a relevant taxpayer (as defined in paragraph (a)(2) of this section) may apply for a withholding certificate. An entity or fiduciary may apply for a withholding certificate with respect to all or less than all relevant taxpayers.

(b) Applications for withholding certificates—(1) In general. An application for a withholding certificate pursuant to §1.1445-6T must be submitted in the manner provided in §1.1445-3T(b). However, in lieu of the information required to be submitted pursuant to §1.1445-3T(b)(4), the applicant must provide the information required by paragraph (b)(2) of this section. In addition, the information required by paragraph (b)(3) of this section must be submitted with the application.

(2) Basis for certificate—(i) Adjusted withholding. If a withholding certificate is sought on the basis of a claim that adjusted withholding is appropriate, the application must include a calculation, in accordance with paragraph (c) of this section, of the maximum tax that may be imposed on each relevant taxpayer with respect to which adjusted withholding is sought. The application must also include all evidence necessary to substantiate the claimed calculation, such as records of adjustments to basis or appraisals of fair market value.

(ii) Exemption. If a withholding certificate is sought on the basis of a relevant taxpayer’s exemption from U.S. tax, the application must set forth a brief statement of the law and facts that support the claimed exemption. See paragraph (d) of this section.

(iii) Agreement. If a withholding certificate is sought on the basis of an agreement for the payment of tax, the application must include a copy of the agreement proposed by the applicant and a copy of the security instrument (if any) proposed by the applicant. In this regard, see paragraph (e) of this section.

(3) Relevant taxpayers. An application for withholding certificate pursuant to this section must set forth the name, identifying number (if any) and home address (in the case of an individual) or office address (in the case of an entity) of each relevant taxpayer with respect to which adjusted withholding is sought.

(c) Adjustment of amount required to be withheld. The Internal Revenue Service may issue a withholding certificate that excuses withholding, or that permits an entity or fiduciary to withhold an adjusted amount reflecting
the relevant taxpayers' maximum tax liability. A relevant taxpayer's maximum tax liability is the maximum amount which that taxpayer could be required to pay as tax by reason of the transaction upon which withholding is required. In the case of an individual taxpayer that amount will generally be the gain realized by the individual, multiplied by the maximum individual income tax rate applicable to long term capital gains, currently 20 percent. In the case of a corporate taxpayer, that amount will generally be the gain realized by the corporation, multiplied by the maximum corporate income tax rate applicable to long term capital gains, currently 28 percent. However, that amount must be adjusted to take into account the following:

1. Any reduction of tax to which the relevant taxpayer is entitled under the provisions of a U.S. income tax treaty;
2. The effect of any nonrecognition provision that is applicable to the transaction;
3. Any losses previously realized and recognized by the relevant taxpayer during the taxable year by reason of the operation of section 897;
4. Any amount realized upon the subject transfer by the relevant taxpayer that is required to be treated as ordinary income under any provision of the Code; and
5. Any other factor that may increase or reduce the tax upon the transaction.

(d) Relevant taxpayer's exemption from U.S. tax—(1) In general. The Internal Revenue Service will issue a withholding certificate that excuses withholding by an entity or fiduciary if it is established that a relevant taxpayer's income from the transaction will be exempt from U.S. tax. For the available exemptions, see paragraph (d)(2) of this section. If a relevant taxpayer is entitled to a reduction of (rather than an exemption from) U.S. tax, then the entity or fiduciary may obtain a withholding certificate to that effect pursuant to the provisions of paragraph (e) of this section.

(2) Available exemptions. A relevant taxpayer's income from a transaction with respect to which withholding is required under section 1445(e) may be exempt from U.S. tax if that taxpayer satisfies either:

(i) The relevant taxpayer is an integral part or controlled entity of a foreign government and the subject income is exempt from U.S. tax pursuant to section 892 and the regulations thereunder; or
(ii) The relevant taxpayer is entitled to the benefits of an income tax treaty that provides for such an exemption, subject to the limitations imposed by section 1125(c) of Pub. L. 95-489, which, in general, overrides such benefits as of January 1, 1985.

(e) Agreement for the payment of tax—(1) In general. The Internal Revenue Service issues a withholding certificate that excuses withholding or that permits an entity or fiduciary to withhold a reduced amount, if the entity, fiduciary, or a relevant taxpayer enters into an agreement for the payment of tax pursuant to the provisions of this paragraph (f). An agreement for the payment of tax is a contract between the Service and the entity, fiduciary, or relevant taxpayer that consists of two necessary elements. Those elements are—

(i) A contract between the Service and the other person, setting forth in detail the rights and obligations of each; and
(ii) A security instrument or other form of security acceptable to the Director, Foreign Operations District.

(2) Contents of agreement—(i) In general. An agreement for the payment of tax must cover the amount described in subdivision (ii) or (iii) of this paragraph (e)(2). The agreement may either provide adequate security for the payment of the amount through a combination of security and withholding of tax by the entity or fiduciary.

(ii) Tax that would otherwise be withheld. An agreement for the payment of tax may cover the amount of tax that would otherwise be required to be withheld with respect to the relevant taxpayer pursuant to section 1445(e). In addition to the amount computed pursuant to section 1445(e), the agreement must provide for the payment of interest upon that amount, at the rate established under section 6621, with respect to the period between the date on which the agreement is entered into and the date on which the relevant taxpayer's payment of tax with respect to the disposition will be due.

(iii) Maximum tax liability. An agreement for the payment of tax may cover the relevant taxpayer's maximum tax liability, determined in accordance with paragraph (c) of this section. The agreement must also provide for the payment of an additional amount equal to 25 percent of the amount determined under paragraph (c) of this section. This additional amount secures the interest and penalties that would accrue between the date of the relevant taxpayer's failure to file a return and pay tax with respect to the disposition, and the date on which the Service collects upon that liability pursuant to the agreement.

(f) Allocation of payment. An agreement for the payment of tax pursuant to this section must set forth an allocation of the payment provided for by the agreement among the relevant taxpayers with respect to which the withholding certificate is sought. In the case of an agreement that covers an amount described in subdivision (ii) or (iii) of this paragraph (e)(2), such allocation must be based upon the amount that would otherwise be required to be withheld with respect to each relevant taxpayer. In the case of an agreement that covers an amount described in subdivision (iii) of this paragraph (e)(2), such allocation must be based upon each relevant taxpayer's maximum tax liability.

(g) Application for an early refund. The application for an early refund of a proportionate share of the excess amount (without interest) an application for an early refund must be addressed to the Director, Foreign Operations District, 1325 K St. NW., Washington, D.C. 20225. No particular form is required for the application, but the following information must be set forth in separate paragraphs numbered to correspond with the numbers given below:

1. Name, address, and identifying number (if any) of the relevant taxpayer seeking the refund;
2. Amount required to be withheld pursuant to withholding certificate;
3. Amount withheld by entity or fiduciary (attach a copy of Form 8288-A stamped by IRS pursuant to § 1.1445-5T(b)(i)); and
4. Amount to be refunded to the relevant taxpayer.

An application for an early refund cannot be processed unless the required copy of Form 8288-A is attached to the application. If an application for a withholding certificate is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund
purposes of sections 897(f) to be treated as a domestic corporation (temporary).

(a) In general. Pursuant to section 897(f) a foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 6039C. A foreign corporation that has made such an election shall also be treated as a domestic corporation for purposes of the withholding required under section 1445, in accordance with the provisions of this section.

(b) Withholding under section 1445(a)—(1) Dispositions by corporation. A foreign corporation that has made an election under section 897(f) may provide a transferee with a certification of non-foreign status in connection with the corporation’s disposition of a U.S. real property interest. However, in accordance with the provisions of § 1.1445-27(b)(2)(ii) and 1.1445-5T(b)(ii)(C), any disposition of an interest by such corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.6012-3(d)(4).

(2) Dispositions of interests in corporation. Dispositions of interests in foreign corporations shall be subject to the withholding requirements of section 1445(a) and the rules of §§ 1.1445-4T through 1.1445-4T. Therefore, if a foreign person disposes of an interest in such a corporation, and that interest is a U.S. real property interest under the provisions of section 897 and regulations thereunder, then the transferee is required to withhold under section 1445(a).

(c) Withholding under section 1445(e). Because a foreign corporation that has made an election under section 897(f) is treated as a domestic corporation for purposes of determining withholding obligations under section 1445, such a corporation is not subject to the requirements of section 1445(e)(2) that a foreign corporation withhold at the corporate capital gain rate from the gain recognized upon the distribution of a U.S. real property interest. Such a corporation is subject to the provisions of section 1445(e)(3). Thus, if interests in an electing corporation constitute U.S. real property interests, then the corporation is required to withhold with respect to the non-dividend distribution of any property to an interest-holder that is a foreign person. See § 1.1445-5T(e).

Section 301 shall be treated as provided in sections 897(f), 1441 and 1442. In addition, if interests in an electing foreign corporation do not constitute U.S. real property interests, then distributions by such corporation shall be treated as provided in section 897(f) (if applicable), 1441 and 1442. Approved by the Office of Management and Budget under control number 545-0902.

§ 1.6012–1 [Amended]

Par. 2. Section 1.6012–1(b)(2)(ii) is amended by adding the following sentence after the second sentence thereof: “In addition, this subdivision does not apply to a nonresident alien individual who has income for the taxable year that is treated under section 871(b)(1) as effectively connected with the conduct of a trade or business within the United States by reason of the operation of section 897.”

§ 6039C–1 and 6039C–5 [Removed]


James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: December 21, 1934.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

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26 CFR Parts 1 and 6a

[T.D. 7999]

Income Taxes; Taxation of Foreign Investment in United States Real Property Interests

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the taxation of foreign investment in United States real property interests. The regulations are necessary to provide the public with guidance with respect to the requirements of section 897 of the Internal Revenue Code of 1984, as added by the Foreign Investment in Real Property Tax Act of 1986. These regulations define relevant terms, provide procedures for establishing that a corporation is not a U.S. real property holding corporation, and provide rules concerning two elections by foreign corporations to be treated as domestic corporations.

DATES: The regulations are generally effective with respect to dispositions after June 16, 1983.


SUPPLEMENTARY INFORMATION:

Background


On September 21, 1983 proposed additions to the Income Tax Regulations (26 CFR Part 1) under sections 637 and 6039C were published in the Federal Register (47 FR 41531), by cross-reference to Temporary Income Tax Regulations (26 CFR Part 6a) published the same day (47 FR 41532). A public hearing concerning the proposed regulations was held on February 3, 1984. The temporary regulations were amended by T.D. 7830, published in the Federal Register on April 28, 1983 (48 FR 19163). A revised set of proposed regulations superseding the prior proposal under section 897 only was published in the Federal Register on November 3, 1983 (48 FR 50931), and a public hearing concerning the revised proposal was held on December 13, 1983. After consideration of all comments received regarding the revised proposed regulations, those regulations are revised and adopted by this Treasury decision. The Service expects to issue regulations under section 1445 before the end of 1984.

Discussion of Comments and Changes to Proposed Regulations Published November 3, 1983

Definitions Under § 1.697–1

Section 1.697–1 provides definitions to be used in applying the regulations under sections 897, 1445, and 6039C. The definitions set forth in the proposed regulations have been modified in the following manner in response to public comment.
Real Property

Section 1.897-1(a) provides a new summary of the purpose and scope of the regulations under section 897. In addition, § 1.897-1(a) sets forth the effective date of these regulations. The regulations will generally apply with respect to all transactions after June 18, 1980, but taxpayers may choose instead to be governed by the temporary regulations with respect to the period between June 19, 1980 and January 30, 1985.

The definition of real property in § 1.897-1(b) has been revised and clarified in response to a number of public comments. First, the definition of “improvements” in § 1.897-1(b)(3) has been substantially expanded and its rules have been modified. Improvements are now defined to include buildings, inherently permanent structures, and the structural components of either. Each of the latter categories is now separately defined, primarily by reference to the principles of § 1.48-1(c), (d), and (e) (relating to the investment tax credit). In addition, general standards drawn from the case law have been added to the definition of an inherently permanent structure, in response to comments pointing out that precedents thus far developed under section 49 may fail to provide adequate guidance with respect to the classification of a particular type of property. These regulations adopt the position, advocated by several commentators, that any property that is “in the nature of machinery” under § 1.48-1(c) or “essentially an item of machinery or equipment” under § 1.48-1(e)(1)(ii) is not an inherently permanent structure. Finally, at one commentator’s suggestion we have clarified the rule that the structural components of a building are those required for its operation or maintenance, as opposed to the operation or maintenance of machinery and equipment.

The second major change in the definition of real property has been made in the rules of § 1.897-1(b)(4) concerning dispositions of associated personal property. Several commentators objected to the operation of the proposed rules, which provided that associated personal property would be treated as such upon disposition unless it was held for one year after it was dissociated from the realty. To provide more flexibility in this area while at the same time preventing avoidance of tax upon related dispositions of realty and associated personality, the regulations now provide that associated personality will not be treated as realty if its disposition occurs one or more years before or after the disposition of the realty or if the realty and personality are separately disposed of to unrelated parties. In addition, several minor clarifying changes were made in respect to the public comments.

Finally, the Service considered but did not follow several other suggested changes to the definition of real property. One commentator argued that submarine areas should be excluded from the definition of real property, at least for purposes of the associated personality rule. This comment was not followed because there appears to be no basis in the statute for distinguishing types of realty based on their location or the types of personality used to exploit them. Another commentator suggested that personally used in connection with leased property should not be treated as associated personality. This suggestion was not followed, as the Service believes that the statute is intended to reach personal property used to exploit real property, regardless of the precise nature of the interest in the exploited property. Another commentator argued that unsevered minerals or timber should not be treated as realty where they are intended for eventual use in a manufacturing operation. This suggestion was not adopted, as there seems to be little authority in the statute for making a distinction in this context based on the intended use of property. In addition, the Service prefers to avoid real property classifications based on a party’s intent, as such a rule could create severe administrative difficulties, particularly in cases where that intent changed. Finally, one commentator questioned why equipment used in mining, farming, and forestry is considered to be associated with the use of real property. The Service believes that a better definition of associated personality would be property not eligible for the investment tax credit. This comment was rejected, first because such ineligible property primarily constitutes buildings and improvements and therefore is not personality at all. Second, the legislative history clearly indicates that mining and farming equipment constitute associated personality. Third, the logical basis for such a classification is clear: property constitutes associated personality if it serves primarily to exploit the real property itself, as opposed to being used in furtherance of some other economic activity that is unavoidably located upon but does not otherwise “use” real property.

Real Property Interest

The definition of a U.S. real property interest provided in § 1.897-1(c) remains substantially unchanged. One commentator suggested that the rule of § 1.897-1(c)(3) concerning publicly traded corporations be made applicable to foreign as well as domestic corporations. Because a foreign corporation’s publicly traded status may be relevant for various purposes, that suggestion has been adopted. In response to one comment concerning the possible liability of brokers or transfer agents, it has been clarified that the five-percent rule of § 1.897-1(c)(2)(iii)(A) refers to beneficial ownership. Although one commentator objected to the rule of § 1.897-1(c)(2)(iii)(B) concerning publicly traded interests in publicly traded corporations, the comment was based on a clear misreading of the rule and was therefore rejected. Finally, a new § 1.897-1(c)(2)(iv) has been added, providing that dispositions of interests in publicly traded partnerships and trusts will be subject to the FIRPTA rules applicable to dispositions of interests in publicly traded corporations. Thus, only foreign persons holding a greater than five percent interest will be subject to section 897 on sale of their interests. The Service believes that FIRPTA’s treatment of interests in publicly traded corporations is appropriately extended to other publicly traded entities, because the FIRPTA problems associated with those entities are similar to the problems associated with publicly traded corporations.

Interest Other Than an Interest Solely as a Creditor

The definition of an interest other than an interest solely as a creditor contained in § 1.897-1(d) remains largely as set forth in the proposed regulations. At the suggestion of one commentator it has been specified in § 1.897-1(d)(2) that section 636 production payments may constitute non-creditor interests if their total amount is contingent upon production, proceeds, or profits of the mineral property. One commentator questioned the Service’s authority to provide in § 1.897-1(d)(2) and (3) that an interest in gross proceeds or profits constitutes an interest other than solely as a creditor. However, the Service continues to believe that the definition of a non-creditor interest for purposes of FIRPTA need not be identical to similar definitions in other areas, and that the Congressional intent to tax all gains derived from real property by foreign persons renders it appropriate to treat as non-creditor interests gross participation rights that could otherwise be used to extract real property gains free of tax. In response to another comment, § 1.897-1(d)(9) now provides
that interests in an entity which are entirely contingent upon non-realty related factors (such as service revenues or unliquidated claims) will not constitute interests other than solely as a creditor for FIRPTA purposes.

The installment obligation rules of § 1.897-1 (d) (2) (ii) (A) and (d) (2) (ii) (A) have been amended in response to several comments. First, at one commentator's request it has been clarified that if a treaty-protected disposition occurs prior to January 1, 1955, and installment sale treatment is avoided (so that all gain is recognized upon disposition occurs prior to January 1, 1955, and installment sale treatment is avoided), then the installment obligation will not constitute a U.S. real property interest. Several other commentators objected to the rule that an installment obligation transferred to an unrelated party would constitute a non-creditor interest in the hands of the purchaser if any real property gain were unrecognized by the original holder of the obligation.

Because of the practical difficulties that would face unrelated purchasers of installment obligations under such a rule, the regulations now provide that the obligation will not constitute a non-creditor interest in the hands of the subsequent holder. Thus relief is limited to unrelated purchasers, as a related purchaser can ascertain how much, if any, real property gain remains inherent in the obligation. Finally, one comment pointed out that the amount of gain or loss realized on the disposition of an installment obligation may depend on market factors extraneous to the actual real property gain inherent in the obligation. Nevertheless, section 453B requires that the gain or loss be accounted for as resulting from the disposition of the real property, and these regulations cannot alter that result.

With respect to the anti-abuse rule of § 1.897-1 (d) (4), one commentator argued that the triggering tax-avoidance motive should be “the principal purpose” rather than “a principal purpose.” This suggestion has not been followed. First, as a theoretical matter the Service does not believe it appropriate to condone transactions that have major tax-avoidance motives solely because some other motive may be marginally more important. Second, the suggested test would as a practical matter involve taxpayers, the Service, and the courts in protracted efforts to divine the one most important purpose behind complicated business transactions. However, the regulations do adopt the suggestion of one commentator that a presumptively arm's-length interest rate be specified. Thus

has been accomplished by cross-reference to the applicable Federal rate under section 1274 (d).

Proportionate Share of Assets Held by an Entity

Minor clarifying changes were made to the provisions of § 1.697-3 (e), which provide rules for determining the proportionate share of assets considered to be held by the holder of an interest in an entity. The rule of § 1.897-1 (c) (ii) (1) that would have ignored disproportionate liquidation interests has been removed in response to a comment. A comment objecting to the rule of § 1.897-4 (e) (5) (ii) concerning discretionary trusts and estates was rejected because the comment ignored the potential abuse against the rule as aimed.

Assets Used or Held for Use in a Trade or Business

Section 1.897-1 (f) contains substantially unchanged rules defining assets that are used or held for use in an entity’s trade or business, which enter into the determination of U.S. real property holding corporation status. In response to two comments, gain, ill and going concern value purchased from related parties may now be included, subject to special valuation and notification rules. In response to another comment, a provision has been added allowing the inclusion of investment assets held by entities the principal business of which is trading or investing in such assets. Finally, as suggested by several commentators a safe harbor provision has been added allowing a presumption that liquid assets are held for use in a trade or business, in an amount up to 5 percent of the value of other trade or business assets.

Several other comments were not adopted. One commentator requested that an example be added concerning insurance company assets, but that was found to be unnecessary in view of the “reserve or capitalization requirement” rule set forth in § 1.897-1 (d) (4). Another commenter objected to the adoption of standards drawn from section 864 for purposes of the trade or business asset determination. That comment was not adopted, as the Service believes that it is appropriate that assets treated under section 864 as used in trade or business for purposes of characterizing income will likewise be treated as used in the trade or business for purposes of the USRFC test.

Finally, five commentators argued that assets held for expansion or other future needs of a business ought to be included as trade or business assets. Those comments were not adopted because they misconstrued the operation of the regulations under section 864. Those regulations generally determine use in a trade or business on the basis of present need, and since plans for the future are not present needs, generally exclude assets held for future diversification, plant replacement, or business contingencies, regardless of where those future events are planned to occur. As noted by one commentator, thus exclusion of liquid assets held for future use is appropriate in this context because it is consonant with the statutory intent of bringing within FIRPTA corporations primarily exploiting real property based on what they are (or have been), not what they may become. However, the safe harbor provision described earlier was added to provide some relief from the need to make judgments as to the intended use of liquid assets.

Related Person

One commentator questioned the authority for the definition of a related person under § 1.897-1 (f). Since transactions arranged between related persons are a simple means of avoiding the effect of rules designed with arms-length dealings in mind, the Service has found it necessary to prevent the avoidance of section 897 by excluding such transactions from consideration in the context of various rules. Rather than separately specifying in each instance the parties whose transactions could be used to manipulate a rule, these regulations adopt a unified approach which is used in every case. Thus, the unified concept of “related person” set forth in § 1.897-1 (f) is well within the Secretary’s authority under section 7602 to issue “all needful rules and regulations for the enforcement of this title.”

Foreign Person

One commentator expressed concern about the effect of § 1.897-1 (f) upon the taxation of fiduciaries, trusts, and beneficiaries. That comment was not followed, as it misinterpreted the effect of the definition of foreign person provided in paragraph (b). That definition simply provides a convenient means of referring to the entire class of persons that may be affected by the characterization under section 897 of real property gains as income effectively connected with a U.S. trade or business. The definition does not in any way determine the substantive consequences of that characterization, which must be ascertained under other relevant provisions of the Internal Revenue Code. Thus, the effect of section 897 gain upon
trusts and their beneficiaries must be determined under the provisions applicable to those persons.

**Fair Market Value of Assets**

The rule provided in § 1.897–0 (c) for determining the fair market value of assets have been modified in several ways. First, in response to four comments the debt that may offset the gross value of the property has been broadened to include long-term debt in replacement of construction loans, and other refinancings, subject to certain restrictions. Second, offsetting is now permitted for debts incurred in direct connection with the property, even if not incurred to purchase or improve it. Third, related-party debt is now permitted to be included in the calculation if certain conditions are met. Intangible assets acquired from related persons may now be valued at their purchase price, subject to special notification rules. Fourth, going concern value and goodwill are now permitted to be valued pursuant to any reasonable method under § 1.897–1(f)(4)(iii), subject to special notification rules. Finally, several minor clarifying changes were made in response to various comments.

**U.S. Real Property Holding Corporations Under § 1.897–2**

Section 1.897–2 sets forth rules concerning the definition and consequences of U.S. real property holding corporation status. A number of clarifying changes have been made to these rules, as summarized below.

**Alternate Real Property Holding Corporation Test**

The alternative test for determining real property holding corporation status on the basis of book values, set forth in § 1.897–2(b)(2), has been modified in response to various comments. First, a separate definition of book value has been set out, in which it is specified that United States accounting principles must be used and that the test is applied with respect to indirectly held assets on the basis of their book value in the hands of the entity directly holding the assets. In addition, it has been clarified that the entity need not keep all of its books in accordance with U.S. accounting principles, so long as the value of the relevant assets is determined in accordance therewith.

Second, a series of rules has been added to clarify the consequences of the Service's rebuttal of the presumption allowed by § 1.897–2(b)(2). In general, a corporation that has properly applied the rules of § 1.897–2(b)(2) will not be subject to penalties if it is later determined that it is a U.S. real property holding corporation, and that determination will generally be given prospective effect only.

**Determination Dates**

The rules concerning the dates on which a corporation must determine its U.S. real property holding corporation status have been substantially changed in response to several public comments. First, a new alternative determination-date method has been added. Under the alternative method, a determination must be made only at the end of each calendar month. Second, because determination dates no longer need to be coordinated with calendar-year information returns of domestic corporations under section 6038C, the mandatory annual determination date has been changed to the last day of the corporation's taxable year, as suggested by several commentators. Third, the rule excusing determinations on the dates of de minimus dispositions of trade or business assets has been expanded to provide similar treatment for small acquisitions of U.S. real property interests. This rule will prevent the triggering of a determination as of every day on which construction materials are converted into real property interests during the construction of an improvement. In addition, a rule has been added to excuse the making of determinations on the dates of the disbursement of cash to meet the regular operating need of a business (e.g., to pay wages and salaries).

**Assets Held Indirectly**

Section 1.897–2(c) provides special rules concerning the assets that a corporation is treated as holding indirectly, which include assets owned by a second corporation in which the first corporation holds a controlling interest. At the suggestion of one commentator, it has been specified that brother-sister corporations will not be considered to hold controlling interests in each other solely by reason of attribution through their common parent pursuant to section 318.

**Termination of U.S. Real Property Holding Corporation Status**

Rules concerning the termination of a corporation's U.S. real property holding corporation status are provided in § 1.897–2(f). In response to three comments, the rules of § 1.897–2(f)(2) concerning early termination upon disposition of all real property interests have been modified to allow the retention of any lease that has a fair market value of zero. The Service did not adopt a suggestion that the alternative book value method of § 1.897–2(b)(2) be made available in testing for the termination of U.S. real property holding corporation status. The Service believes that a more cautious approach is required in making determinations with respect to corporations that have been real property holding corporations than in making determinations with respect to corporations that have never crossed that line.

**Means of Establishing That a Corporation Is Not a U.S. Real Property Holding Corporation**

The rules of § 1.897–2(g) concerning the means of establishing that a corporation is not a U.S. real property holding corporation have been modified in response to several comments. First, it has been specified that a foreign person who in disposing of an interest in a corporation is not thereby excused from filing a return or paying a tax if the corporation's statement is later found to have been incorrect, but will not be subject to penalties. Commentators had argued that the return and payment of tax should be excused in such cases, but those comments were not adopted because the Service lacks authority to excuse substantive tax liability arising under the Code. Second, the regulations now provide that a foreign person or domestic corporation may in the first instance request that the Director of the Foreign Operations District determine the status of a corporation, based on information supplied by the person making the request. However, a request that the Director make a determination based upon his own records may only be made by a person that has filed and failed to obtain information from the corporation as to its status. In addition, the Director may make such determination upon his own motion. Finally, a new provision has been added that permits a domestic corporation determining its own status to make an independent determination of the status of a corporation in which it holds an interest. A corporation that utilizes this rule will be subject to a special notification requirement.

Two commentators questioned the Service's authority to require that domestic corporations notify it that they are not U.S. real property holding corporations. The Service believes that such a requirement is within the authority granted by sections 6014(e), 6011, and 7703.
Elections of Foreign Corporations To Be Treated as Domestic Corporations

Sections 1.897-3 and 1.897-4 provide rules pursuant to which certain foreign corporations may elect under sections 697 (j) and (k) to be treated as domestic corporations for purposes of FIRPTA. Only minor clarifying changes have been made to these rules. The regulations do not follow two comments advocating restriction of the Service's access to shareholder consents and waivers that are permitted pursuant to regulations do not follow two comments only minor clarifying changes have been made to those documents. The Service believes that allowing the signed documents to be retained by the corporation as the most liberal rule permissible, and that any ultimate resolution of the Service's access to those documents would be contrary to the letter and intent of section 697 (j).

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these regulations are not major regulations as defined in Executive Order 12291, and therefore a regulatory impact analysis is not required. The Internal Revenue Service has concluded that these regulations are interpretative and thus the notice and public comment procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act of 1980

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0123.

Drafting Information

The principal author of these regulations is Robert E. Culbertson, Jr, of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects 26 CFR Part 1


Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investment abroad.

26 CFR Part 63


Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 63 are amended as follows:

PART 1—AMENDED

Paragraph 1. Sections 1.897-1 through 1.897-4 are added to Part 1, to read as set forth below:

§ 1.897-1 Taxation of Foreign Investment in United States Real Property Interests, definition of terms.

(a) In general—(1) Purpose and scope of regulations. These regulations provide guidance with respect to the taxation of foreign investments in U.S. real property interests and related matters. This section defines various terms for purposes of sections 637, 1445, and 6038C and the regulations thereunder. Section 1.897-2 provides rules regarding the definition of, and consequences of, U.S. real property holding corporation status. Section 1.897-3 sets forth rules pursuant to which certain foreign corporations may elect under section 639A to be treated as domestic corporations for purposes of sections 637 and 6338C. Finally, § 1.897-4 provides rules concerning the similar election under section 637A for certain foreign corporations in the process of liquidation.

(2) Effective date. The regulations set forth in §§ 1.897-1 through 1.897-4 are effective for transactions occurring after June 16, 1983. However, with respect to all transactions occurring after June 16, 1980 and before January 30, 1983, taxpayers may at their option choose to apply the Temporary Regulations under section 697 (in their entirety). The Temporary Regulations are located at 26 CFR §§ 6a. 897-1 through 6a.897-4 (Revised as of April 1, 1983), and were originally published in the Federal Register for September 51, 1982 (47 FR 41522) and amended by T.D. 7860, published in the Federal Register on April 29, 1983 (48 FR 19463).

(b) Real property—(1) In general. The term "real property" includes the following three categories of property:

Land and uncured natural products of the land. The term "real property" includes land, growing crops and timber, and minerals, and other natural deposits. Crops and timber cease to be real property at the time they are served from the land. Ores, minerals, and other natural deposits cease to be real property when they are extracted from the ground. The storage of severed or extracted crops, timber, or minerals in or upon real property will not cause such property to be recharacterized as real property.

(2) Land and uncured natural products of the land. The term "real property" includes land, growing crops and timber, and minerals, and other natural deposits. Crops and timber cease to be real property at the time that they are served from the land. Ores, minerals, and other natural deposits cease to be real property when they are extracted from the ground. The storage of severed or extracted crops, timber, or minerals in or upon real property will not cause such property to be recharacterized as real property.

(3) Improvements—(1) In general. The term "real property" includes improvements on land. An improvement is a building, any other inherently permanent structure, or the natural components of either, as defined in subdivisions (ii) through (iv) of this paragraph (b)(3).

(2) Building. The term "building" generally means any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing or to provide working, office, parking, display, or sales space. The term includes, for example, structures such as apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations, and stores. Any structure that is classified as a building for purposes of section 1.897-1 and 1.897-2 shall be treated as such for purposes of this section.

(3) Inherently permanent structure—(A) In general. The term "inherently permanent structure" means any property not otherwise described in this paragraph (b)(3) that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Property that is not classified as a building for purposes of section 1.897-1 and 1.897-2 may nevertheless constitute an inherently permanent structure. For purposes of this section, affixation to real property may be accomplished by weight alone.

(B) Use of precedents under section 1.897-2. Any property not otherwise described in this paragraph (b)(3) that constitutes "other tangible property" under the principles of section 1.897-2 (c) and (d) shall not be treated for purposes of this section as an inherently permanent structure. Thus, for example, the term includes swimming pools, paved parking areas and other pavements, special foundations for heavy equipment, wharves and docks, bridges, fences, inherently permanent advertising displays, inherently permanent outdoor
lighting facilities, railroad tracks and signals, telephone poles, permanently installed telephone and television cables, broadcasting towers, oil derricks, oil and gas pipelines, oil and gas storage tanks, grain storage bins, and silos. However, property that is determined to be machinery under § 1.48-1(c) or property which is essentially an item of machinery or equipment under § 1.48-1(e)(1)(i) shall not be treated as an inherently permanent structure.

(C) Absence of precedents under section 48. Where precedents developed under the principles of section 48 fail to provide adequate guidance with respect to the classification of particular property, the determination of whether such property constitutes an inherently permanent structure shall be made in view of all the facts and circumstances. In particular, the following factors must be taken into account:

(1) The manner in which the property is affixed to real property;
(2) Whether the property was designed to be easily removable or to remain in place indefinitely;
(3) Whether the property has been moved since its initial installation;
(4) Any circumstances that suggest the expected period of affixture (e.g., a lease that requires removal of the property upon its expiration);
(5) The amount of damage that removal of the property would cause to the property itself or to the real property to which it is affixed and;
(6) The extent of the effort that would be required to remove the property, in terms of time and expense.

(iv) Structural components of buildings and other inherently permanent structures. Structural components of buildings and other inherently permanent structures, as defined in § 1.48-1(e)(2), themselves constitute improvements. Structural components include walls, partitions, floors, ceilings, windows, doors, wiring, plumbing, central heating and central air conditioning systems, lighting fixtures, pipes, ducts, elevators, escalators, sprinkler systems, fire escapes and other components relating to the operation or maintenance of a building. However, the term "structural components" does not include machinery the sole justification for the installation of which is the fact that such machinery is required to meet temperature or humidity requirements which are essential for the operation of other machinery or the processing of materials or foodstuffs. Machinery may meet the "sole justification" test provided by the preceding sentence even though it incidentally provides for the comfort of employees or serves to an unsubstantial degree areas where such temperature or humidity requirements are not essential.

(4) Personal property associated with the use of the real property—(i) In general. The term "real property" includes movable furnishings, and other personal property associated with the use of the real property. Personal property is associated with the use of real property only if it is described in one of the categories set forth in subdivisions (A) through (D) of this paragraph (b)(4)(i). "Personal property" for purposes of this section means any property that constitutes "tangible personal property" under the principles of § 1.48-3(c), without regard to whether such property qualifies as section 38 property. Such property will be associated with the use of the real property only where both the personal property and the United States real property interest with which it is associated are held by the same person or by related persons within the meaning of § 1.897-1(f). For purposes of this paragraph (b)(4)(i), personal property is used "predominantly" in a named activity if it is devoted to that activity during at least half of the time in which it is in use during a calendar year.

(A) Property used in mining, farming, and forestry. Personal property is associated with the use of real property if it is predominantly used to exploit unsevered natural products in or upon the land. Such property includes mining equipment used to extract ores, minerals, and other natural deposits from the ground. It also includes any property used to cultivate the soil and harvest its products, such as farm machinery, draft animals, and equipment used in the growing and cutting of timber. However, personal property used to process or transport minerals, crops, or timber after they are severed from the land is not associated personal property.

(B) Property used in the improvement of real property. Personal property is associated with the use of real property if it is predominantly used to construct or otherwise carry out improvements to real property. Such property includes equipment used to alter the natural contours of the land, equipment used to clear and prepare raw land for construction, and equipment used to carry out the construction of improvements.

(C) Property used in the operation of a lodging facility. Personal property is associated with the use of real property if it is predominantly used in connection with the operation of a lodging facility.

(i) Dispositions of associated personal property—(A) In general. Personal property that has become associated with the use of a real property interest shall itself be treated as a real property interest upon its disposition, unless either:

(1) The personal property is disposed of more than one year before the disposition of any present right to use or occupy the real property with which it was associated (and subject to the
provisions of subdivision (B) of this paragraph (b)(4)(ii); or

(2) The personal property is disposed of more than one year after the disposition of all present rights to use or occupy the real property with which it was associated (and subject to the provisions of subdivision (C) of this paragraph (b)(4)(ii)); or

(3) The personal property and the real property with which it was associated are separately sold to persons that are related neither to the transferor nor to one another (and subject to the provisions of subdivision (D) of this paragraph (b)(4)(ii)).

(B) Personal property disposed of one year after reality. A transferor of personal property associated with the use of real property need not treat such property as a real property interest upon disposition if on the date of disposition the transferor does not expect or intend to dispose of the real property until more than one year later.

However, if the real property is in fact disposed of within the following year, the transferor must treat the personal property as having been a real property interest as of the date on which the personality was disposed of. If the transferor had not previously filed an income tax return, a return must be filed and tax paid, together with any interest due thereon, by the later of the date on which a tax return or payment is actually due (with extensions), or the 60th day following the date of disposition. If the transferor had previously filed an income tax return, an amended return must be filed and tax paid, together with any interest due thereon, by the later of the dates specified above. Such a transferor may be liable to penalties for failure to file, for late payment of tax, or for understatement of liability, but only if the transferor knew or had reason to anticipate that the real property would be disposed of within one year of the disposition of the associated personal property.

(C) Personally disposed of one year after reality. A disposition of real property shall be disregarded for purposes of subdivision (A)(2) of this paragraph (b)(4)(ii) if any right to use or occupy the real property is reacquired within the one-year period referred to in that subdivision. However, the disposition shall not be disregarded if such reacquisition is made in foreclosure of a mortgage or other security interest, in the exercise of a contractual remedy, or in the enforcement of a judgment. If, however, the reacquisition of the property is made pursuant to a plan the principal purpose of which is the avoidance of the provisions of section 697, 1445, or 6093C and the regulations thereunder, then the initial disposition shall be disregarded for purposes of subdivision (A)(2) of this paragraph (b)(4)(ii).

(D) Separate dispositions of personality and reality. A transferor of personal property associated with the use of real property need not treat such property as a real property interest upon disposition if within 90 days before or after such disposition the transferor separately disposes of the real property interest to persons that are related neither to the transferor nor to the purchaser of the personal property. A transferor may rely upon this rule unless the transferor knows or has reason to know that the purchasers of the real property and the personal property—

(1) Are related persons; or

(2) Intend to reassociate the personal property with the use of the real property within one year of the date of disposition of the personal property.

(E) Status of property in hands of transferee. Personal property that has been associated with the use of real property and that is sold to an unrelated party will be treated as real property in the hands of the transferee only if the personal property becomes associated with the use of real property held or acquired by the transferee, in the manner described in paragraph (b)(4)(i) of this section.

(iii) Determination dates. The determination of whether personal property is personal property associated with the use of real property as defined in this paragraph (b)(4) is to be made on the date the personal property is disposed of and on each applicable determination date. See § 1.637-2(c).

(c) United States real property interest—(1) In general. The term "United States real property interest" means any interest, other than an interest solely as a creditor, in either:

(i) Real property located in the United States or the Virgin Islands, or

(ii) A domestic corporation unless it is established that the corporation was not a U.S. real property holding corporation within the period described in section 697(c)(1)(A)(ii).

In addition to the limited purpose of determining whether any corporation is a U.S. real property holding corporation, the term "United States real property interest" means an interest, other than an interest solely as a creditor, in a foreign corporation unless it is established that the foreign corporation is not a U.S. real property holding corporation within the period prescribed in section 697(c)(1)(A)(ii). See § 1.637-2 for rules regarding the manner of establishing that a corporation is not a United States real property holding corporation.

(2) Exceptions and special rules—(i) Domestically-controlled REIT. An interest in a domestically-controlled real estate investment trust (REIT) is not a U.S. real property interest. A domestically-controlled REIT is one in which less than 50 percent of the fair market value of the outstanding stock was directly or indirectly held by foreign persons during the five-year period ending on the applicable determination date (or the period since June 18, 1939, if shorter). For purposes of this determination the actual owners of stock, as determined under § 1.637-3, must be taken into account.

(ii) Corporation that has disposed of all U.S. real property interests. The term "United States real property interest" does not include an interest in a corporation which has disposed of all its U.S. real property interests in transactions in which the full amount of gain, if any, was recognized, as provided as section 697(c)(1)(B). See § 1.637-2(f) for rules regarding the requirements of section 697(c)(1)(B).

(iii) Publicly-traded corporations. If, at any time during the calendar year, any class of stock of a domestic corporation is regularly traded on an established securities market, an interest in such corporation shall be treated as a U.S. real property interest only in the case of:

(A) Stock of any regularly traded class owned by a person who beneficially owned more than 5 percent of the fair market value of that class of stock at any time during the five year period ending either on the date of disposition of such stock or other applicable determination date (or the period since June 18, 1939, if shorter), or

(B) Any other interest in the corporation (other than an interest solely as a creditor) if on the date such interest was acquired by its present holder it had a fair market value greater than the fair market value on that date of 5 percent of the regularly traded class of the corporation's stock with the lowest fair market value. When a person holds separate non-regularly traded interests in a single corporation that were separately acquired for a principal purpose of avoiding the 5 percent limitation of this subdivision (B), such interests shall be cumulated for purposes of applying that limitation. Separate non-regularly traded interests that were acquired in transactions more than three years apart shall not be cumulated pursuant to this rule. In determining whether a
shareholder holds 5 percent of a class of stock in a corporation (or any other interest of an equivalent fair market value), section 318(a) shall apply (except that sections 318(a) (2)(C) and (3)(C) are applied by substituting the phrase "5 percent" for "50 percent").

(iv) Publicly traded partnerships and trusts. If any class of interests in a partnership or trust is, within the meaning of § 1.897-2(a), regularly traded on an established securities market, then for purposes of sections 897(g) and 1445 and § 1.897-2 (d) and (e), an interest in the entity shall not be treated as an interest in a partnership or trust. Instead, such an interest shall be subject to the rules applicable to interests in publicly traded corporations pursuant to paragraph (c)(2)(ii) of this section. Such interests can be real property interests in the hands of a person that holds a greater than 5 percent interest. Therefore, solely for purposes of determining whether greater than 5 percent interests in such an entity constitute U.S. real property interests the disposition of which is subject to tax, the entity is required to determine pursuant to the provisions of § 1.897-2 whether the assets it holds would cause it to be classified as a U.S. real property holding corporation if it were a corporation. The treatment of dispositions of U.S. real property interests by publicly traded partnerships and trusts is not affected by the rules of this paragraph (d)(2)(iv); by reason of the operation of section 897(a), foreign partners or beneficiaries are subject to tax upon their distributive share of any gain recognized upon such dispositions by the partnership or trust. The rules of this paragraph (c)(2)(iv) are illustrated by the following example.

Example. PTP is a partnership one class of interests in which is regularly traded on an established securities market. A is a nonresident alien individual who owns 1 percent of a class of limited partnership interests in PTP. B is a nonresident alien individual who owns 10 percent of the same class of limited partnership interests in PTP. On July 1, 1968, A and B sell their interests in PTP pursuant to the rules of this paragraph (c)(2)(iv), neither disposition is treated as the disposition of a partnership interest subject to the provisions of section 897(g). Instead, A and B are treated as having disposed of interests in a publicly traded corporation. Therefore, pursuant to the rule of paragraph (c)(2)(iii) of this section, A's disposition of a 1 percent interest has no consequences under section 897. However, B's disposition of a 10 percent interest will constitute the disposition of a U.S. real property interest subject to tax by reason of the operation of section 697 unless it is established pursuant to the rules of § 1.897-2 that the interest is not a U.S. real property interest.

(d) Interest other than an interest solely as a creditor—(1) In general. This paragraph defines an interest other than an interest solely as a creditor, with respect to real property, and with respect to corporations, partnerships, trusts, and estates. An interest solely as a creditor includes an interest in real property or in a domestic corporation that constitutes an interest only as a creditor in the hands of the petitioner. However, an interest solely as a creditor includes an interest in real property or in a domestic corporation that constitutes an interest only as a creditor in the hands of the petitioner. Therefore, solely for purposes of determining whether the first corporation is a U.S. real property holding corporation (except to the extent that such interest constitutes an asset used or held for use in a trade or business, in accordance with rules of § 1.897-1(f)), in addition, the disposition of an interest solely as a creditor in a partnership or trust, or estate, that interest will be disregarded for purposes of determining whether the first corporation is a U.S. real property holding corporation and the rules of this paragraph [d)(2)(ii)(A)] apply, any gain or loss is recognized in the year of disposition, and all tax due is timely paid. See section 1445 and regulations thereunder for further guidance concerning the availability of installment sale treatment under section 453. If an agreement for the payment of tax with respect to an installment sale is entered into with the Internal Revenue Service pursuant to section 445, that agreement may specify whether or not the installment obligation will constitute an interest solely as a creditor. If an installment obligation constitutes an interest other than solely as a creditor then the receipt of each payment shall be treated as the disposition of an interest in real property that is subject to section 897(a) to the extent of any gain required to be taken into account pursuant to section 453.

If the original holder of an installment obligation that constitutes an interest other than solely as a creditor subsequently disposes of the obligation to an unrelated party and recognizes gain or loss pursuant to section 453, the obligation will constitute an interest in real property solely as a creditor in the hands of the subsequent holder.

However, if the obligation is disposed of to a related person and the full amount of gain realized upon the disposition of the real property has not been recognized upon such disposition of the installment obligation, then the obligation shall continue to be an interest in real property other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph [d)(2)(ii)(A)] in addition, if the obligation is disposed of to any person for a principal purpose of avoiding the provisions of sections 897, 1445, or 6039C, then the...
obligation shall continue to be an interest in real property other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (d)(2)(ii)(A). However, rights to payments arising from dispositions that took place before June 19, 1980, shall in no event constitute interests in real property other than solely as a creditor, even if such payments are received after June 19, 1980. In addition, rights to payments arising from dispositions that took place before January 1, 1985, and that were not subject to U.S. tax pursuant to the provisions of a U.S. income tax treaty, shall not constitute interests in real property other than solely as a creditor, even if such payments are received after December 31, 1984.

(B) Options. An option, a contract or a right of first refusal to acquire any interest in real property (other than an interest solely as a creditor) will itself constitute an interest in real property other than solely as a creditor.

(C) Security interests. A right to repossess or foreclose on real property under a mortgage, security agreement, financing statement, or other collateral instrument securing a debt will not be considered a reversionary interest in or a right to share in the appreciation in value of or gross or net proceeds or profits generated by, real property solely because it bears a rate of interest that is tied to an index of general inflation or deflation of prices and interest rates (e.g., the Consumer Price Index). However, where an interest in real property bears a rate of interest that is tied to an index the principal purpose of which is to reflect changes in real property values, the real property interest will be considered an indirect right to share in the appreciation in value of, or gross or net proceeds or profits generated by, real property. Such an indirect right constitutes an interest in real property other than solely as a creditor.

(E) Commissions. A right to payment of a commission, brokerage fee, or similar charge for professional services rendered in connection with the arrangement or financing of a purchase, sale, or lease of real property does not constitute a right to share in the appreciation in value of, or gross or net proceeds or profits of, real property solely because it is based upon a percentage of the purchase price or rent. Thus, a right to a commission earned by a real estate agent based on a percentage of the sales price does not constitute an interest in real property other than solely as a creditor. However, a right to a commission, brokerage fee, or similar charge will constitute an interest other than solely as a creditor if the total amount of the payment is contingent upon appreciation, proceeds, or profits of the real property occurring or arising after the date of the transaction with respect to which the professional services were rendered. For example, a commission earned in connection with the purchase of a real property interest that is contingent upon the amount of gain ultimately realized by the purchaser will constitute an interest in real property other than solely as a creditor.

(F) Trustees' fees, etc. A right to payment of reasonable compensation for services rendered as a trustee, as an administrator of an estate, or in a similar capacity does not constitute a right to share in the appreciation in value of, or gross or net proceeds or profits of, real property solely because the assets of the trust or estate include U.S. real property interests.

(G) Interest in an entity other than solely as a creditor. An interest in an entity other than solely as a creditor will not constitute an interest in real property other than solely as a creditor if the mortgagee's interest in the property otherwise constitutes an interest solely as a creditor.

(D) Indexed interest rates. An interest will not constitute a right to share in the appreciation in the value of, or gross or net proceeds or profits generated by, real property solely because it bears a rate of interest that is tied to an index of any kind that is intended to reflect general inflation or deflation of prices and interest rates (e.g., the Consumer Price Index). However, where an interest in real property bears a rate of interest that is tied to an index the principal purpose of which is to reflect changes in real property values, the real property interest will be considered an indirect right to share in the appreciation in value of, or gross or net proceeds or profits generated by, real property. Such an indirect right constitutes an interest in real property other than solely as a creditor.

(E) A right (whether or not presently exercisable) directly or indirectly to acquire, by purchase, conversion, exchange, or in any other manner, an interest described in subdivision (A), (B), (C), or (D) of this paragraph (d)(3)(i) shall constitute an interest in a corporation any class of the stock of which is regularly traded on an established securities market, but only in the case of a disposition of any portion of an interest described in paragraph (c)(3)(i)(A) or (B) of this section. If the original holder of an installment obligation that constitutes an interest other than solely as a creditor subsequently disposes of the obligation to an unrelated party and recognizes gain or loss pursuant to section 453B, the obligation will constitute an interest in the entity solely as a creditor in the hands of the subsequent holder. However, if the obligation is disposed of to a related person and the full amount of gain realized upon the disposition of the interest in the entity has not been recognized upon such disposition of the installment obligation, then the obligation shall continue to be an interest in the entity other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (d)(3)(ii)(A). In addition, if the
obligation is disposed of to any person for a principal purpose of avoiding the provisions of section 897, 1445, or 6039C, then the obligation shall continue to be an interest in the entity other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (D)(3)(ii)(A). However, rights to payments arising from dispositions that took place before June 19, 1980, shall in no event constitute interests in an entity other than solely as a creditor, even if such payments are received after June 19, 1980. In addition, such treatment shall not apply to payments arising from dispositions to unrelated parties that took place before January 1, 1986, and that were not subject to U.S. tax pursuant to the provisions of a U.S. income-tax treaty, regardless of when such payments are received.

(B) Contingent interests. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section include any right to a payment from an entity the amount of which is contingent on the appreciation in value of an interest described in subdivision (A), (B), or (C) of paragraph (d)(3)(i) of this section or which is contingent on the appreciation in value of assets of, or the general gross or net proceeds or profits derived by, such entity. The right to such a payment is itself an interest in the entity other than solely as a creditor, regardless of whether the holder of such right actually holds an interest in the entity described in subdivision (A), (B), or (C) of paragraph (d)(3)(i) of this section. For example, a stock appreciation right constitutes an interest in a corporation other than solely as a creditor even if the holder of such right actually holds no stock in the corporation. However, the interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include any right to a payment that is (f) exclusively contingent upon and exclusively paid out of revenues from sales of personal property (whether tangible or intangible) or from services, or (g) exclusively contingent upon the resolution of a claim asserted against the entity by a person related neither to the entity nor to the holder of the interest.

(C) Security interests. A right to repurchase or foreclose on an interest in an entity under a mortgage, security agreement, financing statement, or other collateral instrument securing a debt will not of itself cause an interest in an entity which is otherwise an interest solely as a creditor to become an interest other than solely as a creditor.

(D) Royalties. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include rights to payments representing royalties, license fees, or similar charges for the use of patents, inventions, formulas, copyrights, literary, musical or artistic compositions, trademarks, trade names, franchises, licenses, or similar intangible property.

(E) Commissions. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include a right to a commission, brokerage fee or similar charge for professional services rendered in connection with the purchase or sale of an interest in an entity. However, a right to such a payment will constitute an interest other than solely as a creditor if the total amount of the payment is contingent upon appreciation in value of assets of, or proceeds or profits derived by, the entity after the date of the transaction with respect to which the payment was earned.

(F) Trustee's fees. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include a right to payment representing reasonable compensation for services rendered as a trustee, as an administrator of an estate, or in a similar capacity.

(A) Aggregation of interests. If a person holds both interests solely as a creditor and interests other than solely as a creditor in real property or in an entity, those interests will generally be treated as separate and distinct interests. However, such interests shall be aggregated and treated as interests other than solely as a creditor in their entirety if the interest solely as a creditor has been separated from, or acquired separately from, the interest other than solely as a creditor, for a principal purpose of avoiding the provisions of section 897, 1445, or 6039C by causing one or more of such interests to be an interest solely as a creditor. The existence of such a purpose will be determined with reference to all the facts and circumstances. Where an interest solely as a creditor has arm's-length interest and repayment terms it shall in no event be aggregated with and treated as an interest other than solely as a creditor.

(2) Proportionate share of assets held by a corporation or partnership—(l) In general. A person's proportionate or pro rata share of assets held by a corporation or partnership is determined by multiplying—

(A) The person's percentage ownership interest in the entity, by

(B) The fair market value of the assets held by the entity (or the book value of such assets, in the case of a determination pursuant to §1.897-2(b)(2)).

(2) Percentage ownership interest. A person's percentage ownership interest in a corporation or partnership is the percentage equal to the ratio of (A) the sum of the liquidation values of all interests in the entity held by the person to (B) the sum of the liquidation values of all outstanding interest in the entity. The liquidation value of an interest in an entity is the amount of cash and the fair market value of any property that would be distributed with respect to such interest upon the liquidation of the entity after satisfaction of liabilities to persons having interests in the entity solely as creditors. With respect to an
entity that has interests outstanding that grant a presently-exercisable option to acquire or right to convert into or otherwise acquire an interest in the entity other than solely as a creditor, the liquidation value of all interests in such entity shall be calculated as though such option or right had been exercised, giving effect both to the payment of any consideration required to exercise the option or right and to the issuance of the additional interest. The fair market value of the assets of the entity, the amount of cash held by the entity, and the amount of liabilities to persons having interests solely as creditors if determined for this purpose on the date with respect to which the percentage ownership interest is determined.

Example (i). Corporation K's only assets are stock and securities with a fair market value as of the date of determination of $20,000,000. K's assets are subject to liabilities of $10,000,000. Among K's liabilities are a $1,000,000 loan from L, under the terms of which L is entitled, upon payment of the loan principal, to a profit share equal to 10 percent of the excess of the fair market value of K's assets over $10,000,000, but only if all other corporate liabilities have been paid. K has two classes of stock, common and preferred. PS1 and PS2 each own 100 of the 200 outstanding shares of preferred stock. CS1 and CS2 each own 50 of the 1,000 outstanding shares of common stock. Each preferred shareholder is entitled to $10,000 per share of preferred stock upon liquidation, subject to payment of all corporate liabilities and to any amount owed to L, but before any common shareholder is paid. The liquidation value of K, which constitutes an interest other than an interest solely as a creditor, is $1,200,000 (principal of the loan to K plus $200,000 (10 percent of the excess of $20,000,000 over $10,000,000). The liquidation value of each of CS1 and CS2’s blocks of preferred stock is $1,000,000 ($10,000 times 100 shares each). The liquidation value of each of CS1’s and CS2’s blocks of common stock is $3,900,000 ($20,000,000 (the total fair market value of K’s assets) - $9,000,000 (liabilities to creditors other than L) - $1,200,000 (L’s liquidation value) - $200,000 (PS1’s and PS2’s liquidation value)) times 50 percent (the percentage of common stock owned by each). The sum of the liquidation values of all of the outstanding interests in K (i.e., interests other than solely as a creditor) is $11,000,000 ($1,200,000 (L’s liquidation value) + $2,600,000 (PS1’s and PS2’s liquidation values) + $7,800,000 (CS1’s and CS2’s liquidation values)). Each of CS1’s and CS2’s percentage ownership interest in K is 35.5 percent ($3,900,000 divided by $11,000,000). Each of PS1’s and PS2’s percentage ownership interests in K is 9 percent ($1,200,000 divided by $11,000,000). L’s percentage ownership interest in K is 11 percent ($1,200,000 divided by $11,000,000).

Example (2). A, a U.S. person, and B, a foreign person, are partners in a partnership the only asset of which is a parcel of undeveloped land purchased by the partnership in 1930 for $100,000. The partnership has no liabilities, and its capital is $300,000. A’s and B’s interests in the capital of the partnership are 50 percent, respectively, and A and B each has a 50 percent profit interest in the partnership. The partnership agreement provides that upon liquidation any unrealized gain will be distributed in accordance with the partners’ profit interest. In 1934 the partnership has no items of income or deduction, and the fair market value of its parcel of undeveloped land is $350,000. In 1934 the percentage ownership interest of A in the partnership is 35 percent (the ratio of $169,000 (the liquidation value of A’s profit interest in 1934) plus $76,000 (the liquidation value of A’s 25 percent interest in the partnership’s $300,000 capital) to $350,000 (the sum of the liquidation values of all outstanding interests in the partnership)). The percentage ownership interest of B in the partnership in 1934 is 65 percent (the ratio of $255,000 (B’s $169,000 profit interest plus its $86,000 capital interest) to $350,000).

Example (3). A trust, a grantor or other person will be disregarded in the calculation of the percentage held of the U.S. property interests held by the entity. For purposes of determining his own percentage ownership interest in a trust, a grantor or other person will be treated as owning any portion of the trust’s cash and other assets which such person is treated as owning under sections 771 through 777.

Examples. (i) In general. A person’s proportionate or pro rata share of assets held by a trust or estate is determined by multiplying—

(A) The person’s percentage ownership interest in the trust or estate, by

(B) The fair market value of the assets held by the trust or estate (or the book value of such assets, in the case of a determination pursuant to § 1.677-2(b)(2)).

(ii) Percentage ownership interest—

(A) General rule. A person’s percentage ownership interest in a trust or an estate is the percentage equal to the ratio of:

(1) The sum of the actuarial values of such person’s interest in the cash and other assets of the trust or estate held by persons in existence on the date with respect to which such determination is made must equal the amount in paragraph (e)(3)(ii)(A)(2) of this section. If the amount in paragraph (e)(3)(ii)(A)(2) of this section exceeds the sum of the definitely ascertainable actuarial values of the interests held by persons in existence on the determination date, the excess will be considered to be owned in total by each beneficiary who is in existence on such date, whose interest in the excess is not definitely ascertainable and who is potentially entitled to such excess.

However, such excess shall not be considered to be owned in total by each beneficiary if the discretionary terms of the trust or estate were included for a principal purpose of avoiding the provisions of section 697, 1445, or 602C by causing assets other than U.S. real property interests to be attributed in total to each beneficiary. The rules of this paragraph (e)(3) are illustrated by the following example.

Example. A, a U.S. person, established a trust on December 31, 1934, and contributed real property with a fair market value of $10,000,000 to this trust. The terms of that trust provided that the trustee, a bank that is unrelated to A, at its discretion may retain trust income or may distribute it to X, a foreign person, or to the head of state of any country other than the United States. The remainder upon the death of X is to be equally divided between Y and Z, two foreign persons, as survivors. On December 31, 1934, the actuarial value of such interest in the trust or estate is $4,000,000, and the percentage ownership interest of X in the trust is 30 percent.
the total value of the trust's assets is $10,000. On the same date, the actuarial values of the remainder interests of Y and Z in the trust are $8,500 and $500, respectively. Neither the income interest of X nor of the head of state is entitled to such excess. Therefore, X, Y, Z, and the head of state of any country other than the United States are each considered as owning the entire $5,500 income interest in the trust. On December 31, 1984, the total actuarial value of X's interest is $5,500, and his percentage ownership interest is 85 percent. The total actuarial value of Y's interest in the trust is $4,500 ($1,000 plus $3,500), and his ownership interest is 95 percent. The total actuarial value of Z's interest is $9,500 ($500 plus $8,500), and his percentage ownership interest is 95 percent. The actuarial value of the interests of X, Y, Z, and the head of state of any country other than the United States is $8,500, and his percentage ownership interest is 85 percent.

(a) Dates with respect to which percentage ownership interests are determined. The dates with respect to which percentage ownership interests are determined are the applicable determination dates outlined in §§ 1.864-2 or in regulations under section 6038C.

(i) Asset used or held for use in a trade or business—(1) In general. The term "asset used or held for use in a trade or business" means—

(I) Property, other than a U.S. real property interest, that is—

(A) Stock in trade of an entity or other property of a kind which would properly be included in the inventory of the entity if on hand at the close of the taxable year, or property held by the entity primarily for sale to customers in the ordinary course of its trade or business, or

(B) Depreciable property used or held for use in a trade or business, as described in section 1231(b)(1) but without regard to the holding period limitations of section 1231(b), or

(C) Livestock, including poultry, used or held for use in a trade or business for draft, breeding, dairy, or sporting purposes, and

(ii) Goodwill and going concern value, patents, inventions, formulas copyrights, literary, musical, or artistic compositions, trademarks, trade names, franchises, licenses, customer lists, and similar intangible property, but only to the extent that such property is used or held for use in the entity's trade or business and subject to the valuation rules of § 1.857-1(o)(9), and

(iii) Cash, stock, securities, receivables of all kinds, options or contracts to acquire any of the foregoing, and options or contracts to acquire commodities, but only to the extent that such assets are used or held for use in the corporation's trade or business and do not constitute U.S. real property interests.

(2) Used or held for use in a trade or business. An asset is used or held for use in an entity's trade or business if it is, under the principles of § 1.864-4(c)(2)—

(i) Held for the principal purpose of promoting the present conduct of the trade or business, as, for example, in the case of stock acquired and held to assure a constant source of supply for the trade or business.

(ii) Acquired and held in the ordinary course of the trade or business, as, for example, in the case of an account or note receivable arising from that trade or business (including the performance of services), or

(iii) Otherwise held in a direct relationship to the trade or business.

In determining whether an asset is held in a direct relationship to the trade or business, consideration shall be given to whether the asset is needed in that trade or business.

An asset shall be considered to be needed in a trade or business only if the asset is held to meet the present needs of that trade or business and not its anticipated future needs. An asset shall be considered as needed in the trade or business if, for example, the asset is held to meet the operating expenses of that trade or business. Conversely, an asset shall be considered as not needed in the trade or business if, for example, the asset is held for the purpose of providing for future diversification into a new trade or business, future expansion of trade or business activities, future plant replacement, or future business contingencies. An asset that is held to meet reserve or capitalization requirements imposed by applicable law shall be presumed to be held in a direct relationship to the trade or business.

(3) Special rules concerning liquid assets—(i) Safe harbor amount. Assets described in paragraph (f)(1)(ii) of this section shall be presumed to be used or held for use in a trade or business, in an amount up to the fair market value of other assets used or held for use in the trade or business. However, the rule of this paragraph (f)(3)(i) shall not apply with respect to any assets described in paragraph (f)(1)(iii) of this section that are held or acquired for the principal purpose of avoiding the provisions of section 897 or 1445.

(ii) Investment companies. Assets described in paragraph (f)(1)(iii) of this section shall be presumed to be used or held for use in an entity's trade or business if the principal business of the entity is trading or investing in such assets for its own account. An entity's principal business shall be presumed to be trading or investing in assets described in paragraph (f)(1)(iii) of this section if the fair market value of such assets held by the entity equals or exceeds 90 percent of the sum of the fair market values of the entity's U.S. real property interests, interests in real property located outside the United States, assets otherwise used or held for use in trade or business, and assets described in paragraph (f)(1)(iii) of this section.

(4) Examples. The application of this paragraph (f) may be illustrated by the following examples.

Example (1). M, a domestic corporation engaged in industrial manufacturing, is required to hold a large current cash balance for the purposes of purchasing materials and meeting its payroll. The amount of the cash balance so required varies because of the fluctuating seasonal nature of the corporation's business. In months when large cash balances are not required, the corporation invests the surplus amount in U.S. Treasury bills. Since both the cash and the Treasury bills are held to meet the present needs of the business, they are held in a direct relationship to that business, and, therefore, constitute assets used or held for use in the trade or business.

Example (2). R, a domestic corporation engaged in the manufacture of goods, engages a stock brokerage firm to manage securities which were purchased with funds from R's general surplus reserves. The funds invested in these securities are intended to provide for the future expansion of R into a new trade or business. Thus, the funds are not necessary for the present needs of the business: they are accordingly not held in a direct relationship to the business and do not constitute assets used or held for use in the trade or business.

Example (3). B, a federally chartered and regulated bank, is required by law to hold substantial reserves of cash, stock, and securities. Pursuant to the rule of paragraph (f)(2) of this section, such assets are presumed to be held in a direct relationship to B's business, and thus constitute assets used or held for use in the trade or business. In addition, B holds substantial loan receivables which are acquired and held in the ordinary course of its banking business. Pursuant to the rule of paragraph (f)(1)(iii) of this section, such receivables constitute
assets used or held for use in the trade or business.

(g) Disposition: For purposes of sections 897, 1445, and 6039C, the term "disposition" means any transfer that would constitute a disposition by the transferor for any purpose of the Internal Revenue Code and regulations thereunder. The severance of crops or timber and the extraction of minerals do not alone constitute a disposition of a U.S. real property interest.

(h) Gain or loss. The amount of gain or loss arising from the disposition of the U.S. real property interest shall be determined as provided in section 1001 (a) and (b). Such gain or loss shall be subject to the provisions of section 897 (a) and (b), unless a nonrecognition provision is applicable pursuant to section 897 (e), and as gain is realized upon that transfer then would not give rise to the transfer to domestic individual Z. For purposes of sections 897, 1445, and 6039C, the term "established securities market" means—

(1) A national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78a),

(2) A foreign national securities exchange which is officially recognized, sanctioned, or supervised by governmental authority, and

(3) Any over-the-counter market. An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers which regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

(n) Regularly traded. A class of stock that is traded on an established securities market is considered to be "regularly traded" if it is regularly quoted by brokers or dealers making a market in such stock. A class of stock shall be presumed to be regularly traded if the corporation has a total of 500 or more shareholders.

(o) Fair market value—(1) In general. For purposes of sections 897, 1445, and 6039C only, the term "fair market value" means the value of the property determined in accordance with the rules, contained in this paragraph (o). The definition of fair market value provided herein is not to be used in the calculation of gain or loss from the disposition of a U.S. real property interest pursuant to section 1001. An independent professional appraisal of the value of property must be submitted only if such an appraisal is specifically
requested in connection with the negotiation of a security agreement pursuant to section 1445.

(2) Method of calculating fair market value—(f) In general. The fair market value of property is its gross value (as defined in paragraph (o)(2)(ii) of this section) reduced by the outstanding balance of any debts secured by the property which are described in paragraph (o)(2)(iii) of this section. See § 1.897–2(b) for the alternative use of book values in certain limited circumstances.

(ii) Gross value. Gross value is the price at which the property would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts. Generally, with respect to trade or business assets, going concern value should be used as it will provide the most accurate reflection of such a price. However, taxpayers may use other methods of valuation if they can establish that such method will provide a more accurate determination of gross value and if they consistently apply such method to all assets to be valued. See subdivisions (3) and (4) of this paragraph (o) for special rules with respect to the valuation of leases and of intangible assets.

(iii) Debts secured by the property. The gross value of property shall be reduced by the outstanding balance of debts that are:

(A) Secured by a mortgage or other security interest in the property that is valid and enforceable under the law of the jurisdiction in which the property is located, and

(B) Either (1) incurred to acquire the property (including long-term financing obtained in replacement of construction loans or other short-term debt within one year of the acquisition or completion of the property), or (2) otherwise incurred in direct connection with the property, such as property tax liens upon real property or debts incurred to maintain or improve property.

In addition, if any debt described in this paragraph (o)(2)(iii) is refinanced for a valid business purpose (such as obtaining a more favorable rate of interest), the principal amount of the replacement debt does not exceed the outstanding balance of the original debt, and the replacement debt is secured by the property, then the gross value of the property shall be reduced by the replacement debt. Obligations to related persons shall not be taken into account for purposes of this paragraph (o)(2)(iii) unless such obligations constitute interests solely as a creditor pursuant to the provisions of paragraph (d)(4) of this section and unless the related person has made similar loans to unrelated persons on similar terms and conditions.

(iv) Anti-abuse rule. The gross value of real property located outside the United States and of assets used or held for use in a trade or business shall be reduced by the outstanding balance of any debt that was entered into for the principal purpose of avoiding the provisions of section 897, 1445, or 6039C by enabling the corporation to acquire such assets. The existence of such a purpose shall be determined with reference to all the facts and circumstances. Debts that a particular corporation routinely enters into in the ordinary course of its acquisition of assets used or held for use in its trade or business will not be considered to be entered into for the principal purpose of avoiding the provisions of section 897, 1445, or 6039C.

(3) Fair market value of leases and options. For purposes of sections 897, 1445, and 6039C, the fair market value of a leasehold interest in real property is the price at which the lease could be assigned or the property sublet, neither party to such transaction being under any compulsion to enter into the transaction and both having reasonable knowledge of all relevant facts. Generally, the value of a leasehold interest will generally consist of the present value, over the period of the lease remaining, of the difference between the rental provided for in the lease and the current rental value of the real property. A leasehold interest bearing restrictions on its assignment or sublease has a fair market value of zero, but only if those restrictions in practical effect preclude (rather than merely condition) the lessee's ability to transfer, at a gain, the benefits of a favorable lease. The normal commercial practice of lessors may be used to determine whether restrictions in a lease have the practical effect of precluding transfer at a gain. The fair market value of an option to purchase any property is, similarly, the price at which the option could be sold, consisting generally of the difference between the option price and the fair market value of the property, taking proper account of any restrictions upon the transfer of the option.

(4) Fair market value of intangible assets. For purposes of determining whether a corporation is a U.S. real property holding corporation, the fair market value of intangible assets described in § 1.897–1(f)(1)(ii) may be determined in accordance with the following rules.

(i) Purchase price. Intangible assets described in § 1.897–1(f)(1)(ii) that were acquired by purchase from a person not related to the purchaser within the meaning of § 1.897–1(i) may be valued at their purchase price. However, such purchase price must be adjusted to reflect any amortization required by generally accepted accounting principles applied in the United States. Intangible assets acquired by purchase shall include any amounts allocated to goodwill or going concern valued pursuant to section 338(b)(3) and regulations thereunder. Intangible assets acquired by purchase shall not include assets that were acquired through an acquisition of stock to which section 338 does not apply. Such assets must be value pursuant to a method described in subdivision (ii) or (iii) of this paragraph (o)(4).

(ii) Book value. Intangible assets described in § 1.897–1(f)(1)(ii) other than good will and going concern value may be valued at the amount at which such assets are carried on the financial accounting records of the holder of such assets, provided that such amount is determined in accordance with generally accepted accounting principles applied in the United States. However, this method may not be used with respect to assets acquired by purchase from a related person within the meaning of § 1.897–4(i).

(iii) Other methods. Intangible assets described in § 1.897–1(f)(1)(ii) may be valued pursuant to any other reasonable method at a fair market value reflecting the price at which the asset would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and having reasonable knowledge of all relevant facts. However, a corporation that uses a method of valuation other than the purchase price or book value methods may be required to comply with the special notification requirements of § 1.897–2(h)(1)(iii)(A).

(p) Identifying number. The "identifying number" of an individual is the individual's United States social security number. The "identifying number" of any other person is its United States employer identification number.

§ 1.897–2 United States real property holding corporations.

(a) Purpose and scope. This section provides rules regarding the definition and consequences of U.S. real property holding corporation status. U.S. real property holding corporation status is
important for determining whether gain from the disposition by a foreign person of an interest in a domestic corporation is taxable. Such status is also important for purposes of the withholding and reporting requirements of sections 1445 and 6038C. For example, a person that buys stock of a U.S. real property holding corporation from a foreign person is required to withhold under section 1445. In addition, for purposes of determining whether another corporation is a U.S. real property holding corporation, an interest in a foreign corporation is a U.S. real property interest unless it is established that the foreign corporation is not a U.S. real property holding corporation. The general definition of a U.S. real property holding corporation is provided in paragraph (b) of this section. Paragraph (c) provides rules regarding the dates on which U.S. real property holding corporation status must be determined. The assets that must be included in making the determination of a corporation’s status are set forth in paragraph (d), while paragraph (e) provides special rules regarding the treatment of interests held by a corporation in partnerships, trusts, estates, and other corporations. Rules regarding the termination of U.S. real property holding corporation status are set forth in paragraph (f). Paragraph (g) explains the manner in which an interest-holder can establish that a corporation is not a U.S. real property holding corporation, and paragraph (h) provides rules regarding certain notification requirements applicable to corporations.

(b) U.S. real property holding corporation—(1) In general. A corporation is a U.S. real property holding corporation if the fair market value of the U.S. real property interests held by the corporation on any applicable determination date equals or exceeds 50 percent of the sum of the fair market values of its—

(i) U.S. real property interests;

(ii) Interests in real property located outside the United States; and

(iii) Assets other than those described in subdivision (i) or (ii) of this paragraph (b)(1) that are used or held for use in its trade or business.

See paragraphs (d) and (e) of this section for rules regarding the directly and indirectly held assets that must be included in the determination of whether a corporation is a U.S. real property holding corporation. The term “interest in real property located outside the United States” means an interest other than solely as a creditor (as defined in §1.697-1(d)) in real property (as defined in §1.697-1(b)) that is located outside the United States or the Virgin Islands. If a corporation qualifies as a U.S. real property holding corporation on any applicable determination date after June 18, 1983, any interest in it shall be treated as a U.S. real property interest for a period of five years from that date, unless the provisions of paragraph (b)(2) of this section are applicable.

(2) Alternative test—(i) In general. The fair market value of a corporation’s U.S. real property interests shall be presumed to be less than 50 percent of the fair market value of the aggregate of its assets described in paragraphs (d) and (e) of this section if on an applicable determination date the total book value of the U.S. real property interests held by the corporation is 25 percent or less of the book value of the aggregate of the corporation’s assets described in paragraphs (d) and (e) of this section.

(ii) Definition of book value. For purposes of this section and §1.697-1(e) the term “book value” shall be defined as follows. In the case of assets that are held directly by the corporation, the term means the value at which an item is carried on the financial accounting records of the corporation, if such value is determined in accordance with generally accepted accounting principles applied in the United States. In the case of assets of which a corporation is treated as holding a pro rata share pursuant to paragraphs (e) (2) and (3) of this section and §1.697-1(e), the term “book value” means the corporation’s share of the value at which the asset is carried on the financial accounting records of the entity that directly holds the asset, if such value is determined in accordance with generally accepted accounting principles applied in the United States. For purposes of this paragraph (b)(2)(ii), an entity need not keep all of its books in accordance with U.S. accounting principles, so long as the value of the relevant assets is determined in accordance therewith.

(iii) Denial of presumption. If the Internal Revenue Service determines, on the basis of information as to the fair market values of a corporation’s assets, that the presumption allowed by this paragraph (b)(2) may not accurately reflect the status of the corporation, the Service will notify the corporation that it may not rely upon the presumption. The Service will provide a written notice to the corporation that sets forth the general grounds for the Service’s conclusion that the presumption may be inaccurate. By the 90th day following the date on which the corporation receives the Service’s notification, the corporation must determine whether on its most recent determination date it was a U.S. real property holding corporation pursuant to the general rule set forth in paragraph (b)(1) of this section and must notify the Service of its determination. If the corporation determines that it was not a U.S. real property holding corporation pursuant to the general rule, then the corporation must notify the Service of the date on which it determined that it was not a U.S. real property holding corporation. If the corporation determines that it was a U.S. real property holding corporation on its most recent determination date, then by the 180th day following the date on which the corporation received the Service’s notification the corporation (if a domestic corporation) must notify each holder of an interest in it that contrary to any prior representations it was a U.S. real property holding corporation as of its most recent determination date.

(iv) Applicability of penalties. A corporation that had previously relied upon the presumption allowed by this paragraph (b)(2) but that is determined to be a U.S. real property holding corporation shall not be subject to penalties for any incorrect notice previously given pursuant to the requirements of paragraph (h) of this section, if:

(A) The corporation in fact carried out the necessary calculations enabling it to rely upon the presumption allowed by this paragraph (b)(2)

(B) The corporation complies with the provisions of paragraph (b)(2)(iii) of this section. However, a corporation shall remain subject to any applicable penalties if at the time of its reliance on the presumption allowed by this paragraph (b)(2) the corporation knew that the book value of relevant assets was substantially higher or lower than the fair market value of those assets and therefore had reason to believe that under the general test of paragraph (b)(1) of this section the corporation would probably be a U.S. real property holding corporation. Information with respect to the fair market value of its assets is known by a corporation if such information is included on any books and records of the corporation or its agent, is known by its directors or officers, or is known by employees who in the course of their employment have reason to know such information. A corporation relying upon the presumption allowed by this paragraph (b)(2) has no affirmative duty to determine the fair market values of
assets if such values are not otherwise known to it in accordance with the preceding sentence. The rules of this paragraph (b)(2)(iv) may be illustrated by the following examples.

Example 1. DC is a domestic corporation engaged in light manufacturing that knows that it has foreign shareholders. On its December 31, 1985 determination date DC held assets used in its trade or business, consisting largely of recently-purchased equipment, with a book value of $300,000.

DC’s only real property interest was a factory that it had occupied for over 99 years, which had a book value of $1,897,200.00. The factory was located in a deteriorated downtown area, and DC had no knowledge of any facts indicating that the fair market value of the property was substantially higher than its book value. Therefore, DC was entitled to rely upon the presumption allowed by § 1.897-2(b)(2) and any incorrect statement pursuant to § 1.897-2(b)(2) that arose out of such reliance would not give rise to penalties.

Example 2. The facts are the same as in Example 1, except as follows. By the time of DC’s December 31, 1989 determination date, the downtown area in which DC’s factory was located had become the subject of an extensive urban renewal program. On December 1, 1989, the president of DC was offered $765,000 for the factory by a developer who planned to convert the property into condominiums. Because DC thus had knowledge of the fair market value of its assets which made it clear that the corporation would probably be a U.S. real property holding corporation under the general rules of § 1.897-2(b)(1), DC was not entitled to rely upon the presumption allowed by § 1.897-2(b)(2) after December 1, 1989, and any false statements arising out of such reliance thereafter would give rise to penalties.

(v) Effect on interest-holders and related persons. If a corporation that had properly relied upon the presumption allowed by this paragraph (b)(2) determines that it is a U.S. real property holding corporation, that determination shall in general be given prospective effect only. Thus, a foreign person that previously sold an interest in such a corporation and did not file a tax return or pay a tax in reliance upon a notification from the corporation pursuant to paragraph (g) and (h) of this section will not be required to file a return or pay a tax at the time of the corporation’s determination that it is a U.S. real property holding corporation. Similarly, if a corporation had properly determined that it was not itself a U.S. real property holding corporation in reliance upon a notification pursuant to paragraphs (g) and (h) of this section, then it need not redefine its status with respect to any prior period but must redefine its status as of the date on which it receives the notification described in paragraph (b)(2)(iii) of this section. However, the determination shall be given retroactive effect with respect to any person that knew or had reason to know that a corporation’s reliance upon the presumption allowed by this paragraph (b)(2) was unreasonable. Any person that knowingly relied upon an unreasonable presumption shall remain liable for all taxes, interest, and penalties arising out of the corporation’s status as a U.S. real property holding corporation.

(c) Determination dates for applying U.S. real property holding corporation test—(1) In general. Whether a corporation is a U.S. real property holding corporation is to be determined as of the following dates:

(i) The last day of the corporation’s taxable year;

(ii) The date on which the corporation acquires any U.S. real property interest;

(iii) The date on which the corporation disposes of an interest in real property located outside the United States or disposes of other assets used or held for use in a trade or business during the calendar year, subject to the provisions of paragraph (c)(2)(iv) of this section; and

(iv) In the case of a corporation that is treated pursuant to paragraph (g)(4) or (s) of this section as owning a portion of the assets held by an entity in which the corporation directly or indirectly holds an interest, the date on which that entity either (A) acquires a U.S. real property interest, (B) disposes of an interest in real property located outside the United States or (C) disposes of other assets used or held for use in a trade or business during the calendar year, subject to the provisions of paragraph (c)(2)(iv) of this section. A determination that is triggered by a transaction described in subdivision (ii), (iii), or (iv) of this paragraph (c)(1) must take such transaction into account. However, the first determination of a corporation’s status need not be made until the 120th day after the later of the date of incorporation or of the date on which the corporation first acquires a shareholder. In addition, no determination of a corporation’s status need be made during the 12-month period beginning on the date on which a corporation adopts a plan of complete liquidation, provided that all the assets of the corporation (other than assets retained to meet claims) are distributed within such period.

(2) Transactions not requiring a determination—(i) Transactions by corporation. Notwithstanding the provisions of paragraph (c)(1) of this section, a determination of U.S. real property holding corporation status need not be made on the date of:

(A) A corporation’s disposition of inventory or livestock (as described in § 1.897-1(f)(1)(i)(A) and (C));

(B) The satisfaction of accounts receivable arising from the disposition of inventory or livestock or from the performance of services;

(C) The disbursement of cash to meet the regular operating needs of the business (e.g., to acquire inventory or to pay wages and salaries);

(D) A corporation’s disposition of assets used or held for use in a trade or business (other than inventory or livestock) not in excess of a limitation amount determined in accordance with the rules of subdivision (iii) of this paragraph (c)(2); or

(E) A corporation’s acquisition of U.S. real property interests not in excess of a limitation amount determined in accordance with the rules of subdivision (iii) of this paragraph (c)(2).

(ii) Transactions by entity other than corporation. Notwithstanding the provisions of paragraph (c)(1)(iv) or (c)(2)(v) of this section, in the case of a corporation that is treated as owning a portion of the assets held by an entity in which the corporation directly or indirectly holds an interest, a determination of U.S. real property holding corporation status need not be made on the date of:

(A) The entity’s disposition of inventory or livestock (as described in § 1.897-1(f)(1)(i)(A) and (C));

(B) The satisfaction of accounts receivable arising from the entity’s disposition of inventory or livestock or from the performance of personal services;

(C) The entity’s disbursement of cash to meet the regular operating needs of its business (e.g., to acquire inventory or to pay wages and salaries);

(D) The entity’s disposition of assets used or held for use in a trade or business (other than inventory or livestock) not in excess of a limitation amount determined in accordance with the rules of subdivision (iii) of this paragraph (c)(2); or

(E) The entity’s acquisition of U.S. real property interests not in excess of a limitation amount determined in accordance with the rules of subdivision (iii) of this paragraph (c)(2).

(iii) Calculation of limitation amount. The amount of assets used or held for use in a trade or business that may be disposed of, and the amount of U.S. real property interests that may be acquired, by a corporation or other entity without triggering a determination date shall be calculated in accordance with the following rules:
(A) If, in accordance with the provisions of paragraphs (c) and (e) of this section, a corporation on its most recent determination date was considered to hold U.S. real property interests having a fair market value that was less than 25 percent of the aggregate fair market value of all the assets it was considered to hold, then the applicable limitation amount shall be 10 percent of the fair market value of all trade or business assets or all U.S. real property interests (as applicable) held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on that determination date.

(B) If, in accordance with the provisions of paragraphs (d) and (e) of this section, a corporation on its most recent determination date was considered to hold U.S. real property interests having a fair market value that was equal to or greater than 25 and less than 35 percent of the aggregate fair market value of all the assets it was considered to hold, then the applicable limitation amount shall be 5 percent of the fair market value of all trade or business assets or all U.S. real property interests (as applicable) held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on that determination date.

(C) If, in accordance with the provisions of paragraphs (d) and (e) of this section, a corporation on its most recent determination date was considered to hold U.S. real property interests having a fair market value that was equal to or greater than 35 percent of the aggregate fair market value of all the assets it was considered to hold, then the applicable limitation amount shall be 5 percent of the fair market value of all trade or business assets or all U.S. real property interests (as applicable) held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on that determination date.

(D) If a corporation is not a U.S. real property holding corporation under the alternative monthly determination method of paragraph (b)(2) of this section (relating to the book value of the corporation's assets), then the applicable limitation shall be 10 percent of the book value of all trade or business assets or all U.S. real property interests (as applicable) held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on the most recent determination date.

Dispositions or acquisitions by the corporation or other entity of assets having a value less than the applicable limitation amount must be cumulated by the corporation or entity making such dispositions or acquisitions, and a determination must be made on the date of a transaction that causes the total of either type to exceed the applicable limitation. Once a determination is triggered by a transaction that causes the applicable limitation to be exceeded, the computation of the amount of trade or business assets disposed of or real property interests transferred after that date shall begin again at zero.

The rules of this paragraph (c)(2) may be illustrated by the following examples.

Example (1). DC is a domestic corporation, no class of stock of which is regularly traded on an established securities market, that knows that it has several foreign shareholders. As of December 31, 1983, DC holds U.S. real property interests with a fair market value of $550,000, no real property interests located outside the U.S. and other assets used in its trade or business with a fair market value of $1,650,000. Thus, the fair market value of DC's U.S. real property interests ($550,000) is less than 25 percent of the total of the assets held directly by DC ($2,190,000). DC's only U.S. real property holding corporation status, under the rules of paragraph (c)(1)(ii) of this section. a determination date for DC on its most recent determination date.

The applicable limitation amount shall be the amount of trade or business assets disposed of or real property interests transferred after that date shall begin again at zero.

Example (2). DC is a domestic corporation, no class of stock of which is regularly traded on an established securities market, that knows that it has several foreign shareholders. As of December 31, 1983, DC's only assets are a U.S. real property interest with a fair market value of $350,000 other assets used or held for use in its trade or business with a fair market value of $600,000, and a 59 percent ownership interest in domestic partnership DP. DC's interest in DP constitutes a percentage ownership interest in the partnership of 59 percent, and pursuant to the rules of paragraph (c)(2) of this section, DC is treated as owning a portion of the assets of DP determined by multiplying that percentage by the fair market value of DP's assets. As of December 31, 1983, DP's only assets are U.S. real property interests with a fair market value of $1,200,000 and other assets used in its trade or business with a fair market value of $920,000. As of its December 31, 1983, determination date, the fair market value ($350,000) of the U.S. real property interests DC holds ($1,600,000) and is treated as holding ($500,000 (The fair market value of DP's U.S. real property interest ($500,000) multiplied by DC's percentage ownership interest in DP (59 percent))), is equal to 5 percent of the total of the fair market values ($1,150,000) of the U.S. real property interests DC holds and is treated as holding ($860,000) DC's interest in real property located outside the United States (zero), and assets used or held for use in a trade or business that DC holds or is treated as holding ($760,000) ($600,000 (held directly) plus $160,000 (DC's 59 percent share of assets used or held for use in its trade or business by DP)). Thus, under the rules of paragraph (c)(1)(ii) and (iii) of this section, DC may dispose of assets used or held for use in its trade or business with a fair market value equal to 5 percent ($190,000) of the total fair market value ($350,000) of such assets held directly by it on its most recent determination date (December 31, 1983), without triggering a determination of its U.S. real property holding corporation status. Under the rules of paragraph (c)(2)(ii) and (iii) of this section, a determination date for DC could be triggered by DP's disposition of trade or business assets (other than inventory or livestock) with a fair market value equal to 5 percent ($120,000) of the total fair market value ($2,400,000) of such assets held by it as of DC's most recent determination date (December 31, 1983). However, any disposition of such assets by DP exceeding that limitation would trigger a determination of DC's U.S. real property holding corporation status. In addition under the rules of paragraph (c)(1)(iii) of this section, any disposition of a U.S. real property interest by DP would trigger a determination date for DC, while under the rules of paragraph (c)(2)(ii) of this section no disposition of inventory or livestock by DP would trigger a determination for DC.

(2) Alternative monthly determination dates—(i) In general. Notwithstanding the provisions of paragraph (c)(1) and (2) of this section, a corporation may choose to determine its U.S. real
property holding corporation status in accordance with the rules of this paragraph (c)(3). In the case of a corporation that has determined that it is not a U.S. real property holding corporation pursuant to the alternative test of paragraph (b)(9) of this section (relating to the book value of the corporation’s assets), the rules of this paragraph (c)(3) may be applied by using book values rather than fair market values in all relevant calculations.

(ii) Monthly determinations. A corporation that determines its U.S. real property holding corporation status in accordance with the rules of this paragraph (c)(3) must make a determination at the end of each calendar month.

(iii) Transactional determinations. A corporation that determines its U.S. real property holding corporation status in accordance with the rules of this paragraph (c)(6) must make a determination as of the date on which, pursuant to a single transaction (consisting of one or more transfers): (A) U.S. real property interests are acquired, and/or

(B) Interests in real property located outside the U.S. and/or assets used or held for use in a trade or business are disposed of, if the total fair market value of the assets acquired and/or disposed of exceeds 5 percent of the sum of the fair market values of the U.S. real property interests, interests in real property located outside the U.S., and assets used or held for use in a trade or business held by the corporation.

(iv) Exceptions. Notwithstanding any other provision of this paragraph (c)(6), the first determination of a corporation’s status need not be made until the 120th day after the later of the date of incorporation or the date on which the corporation first acquires a shareholder. In addition, no determination of a corporation’s status need be made during the 12-month period beginning on the date on which a corporation adopts a plan of complete liquidation, if all the assets of the corporation (other than assets retained to meet claims) are distributed within such period.

(a) Valuation date methods—(i) In general. For purposes of determining whether a corporation is a U.S. real property holding corporation on any applicable determination date, the fair market value of the assets held by the corporation (in accordance with §1.897-2(d)(3)) as of that determination date must be used.

(ii) Alternative valuation date method for determination dates other than the last day of the taxable year. For purposes of paragraph (c)(3)(i) of this section, if an applicable determination date under paragraph (c)(1), (2), or (3) of this section is other than the last day of the taxable year, property may be valued as of the later of the last day of the previous taxable year or the date such property was acquired. For purposes of the determination date that follows the last day of the taxable year, fair market value as of that date must always be used.

(iii) Consistent methods. The valuation date method selected under this paragraph (c)(4) for the first determination date in a taxable year must be used for all subsequent determination dates for such year. In addition, the valuation date method selected must be used for all property with respect to which the determination is made. The use of one method for one taxable year does not preclude the use of the other method for any other taxable year.

(b) Foreign property exception. Paragraph (c)(4) must be applied by a corporation pursuant to the alternative paragraph (c)(3). In the case of a property holding corporation if the total fair market value of the property held through a domestic or foreign corporation that determines its U.S. real property interest is less than $1,000,000, the corporation may be treated as not making the determination under paragraph (c)(3) for a taxable year in which it does not maintain such a corporation.

(c) Form of determination. The determination required by paragraph (c)(4) must be in writing and certified by an authorized officer of the corporation.

(d) Form of Determi.
(2) Proportionate ownership of assets held by partnerships, trusts, and estates. For purposes of determining whether a corporation is a U.S. real property holding corporation, a holder of an interest in a partnership, a trust, or an estate (whether domestic or foreign) shall be treated pursuant to section 897(c)(4)(B) as holding a proportionate share of the assets held by the entity. However, a holder of an interest shall not be treated as holding a proportionate share of assets that in the hands of the entity are subject to the rule of § 1.697-4(i)(3) (concerning the trade or business assets of investment companies). Such proportionate share is to be determined in accordance with the rules of § 1.697-1(e) on each applicable determination date. The interest in the entity shall itself be disregarded when a proportionate share of the entity's assets is attributed to the interest-holder pursuant to the rule of this paragraph (e)(2). Any asset treated as held by a holder of an interest by reason of this paragraph (e)(2) which is used or held for use in a trade or business by the partnership, trust, or estate shall be treated as so used or held for use by the holder of the interest. The proportionate ownership rule of this paragraph (e)(2) applies successively upward through a chain of ownership. The proportionate ownership rule of this paragraph (e)(2) is illustrated by the following examples. In each example fair market value is determined as of the applicable determination date under paragraph (e)(1)(i) of this section.

Example (1). Nonresident alien individual F holds all of the stock of domestic corporation US. US's only assets are 40 percent of the stock of foreign corporation FC1. Nonresident alien individual N, unrelated to US, holds the other 60 percent of FC1's stock. FC1's only assets are 40 percent of the stock of foreign corporation FC2. The remaining 60 percent of the stock of FC2 is owned by US, and US's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000. FC2, therefore, is a U.S. real property holding corporation, and the stock of FC2 is a U.S. real property interest for purposes of determining whether US is a U.S. real property holding corporation (but not for purposes of determining FC1's gain from the disposition of FC2 stock as effectively connected with a U.S. trade or business under section 887(a)). As all of FC1's assets are U.S. real property interests, the stock of FC1 held by US is a U.S. real property holding corporation (but not for purposes of subjecting N's gain on the disposition of FC1 stock to the provisions of section 897(a)). As US is a domestic corporation and as all of its assets are U.S. real property interests, US is a U.S. real property holding corporation, and the stock of US held by B is a U.S. real property interest for purposes of section 897(a)). Therefore, B's gain or loss upon the disposition of the stock of US within 5 years of the most recent determination date is subject to the provisions of section 897(a).

(3) Controlling interests in corporations. For purposes only of determining whether a corporation is a U.S. real property holding corporation, if the corporation (the "first corporation") holds a controlling interest in a second corporation—

(1) The first corporation is treated as holding a proportionate share of each asset (i.e., U.S. real property interests, interests in real property located outside the United States (subject to the provisions of section 897(a)), and an interest in a partner in a domestic partnership or a partner in a foreign partnership), and an interest in a partner in a domestic partnership or a partner in a foreign partnership) held by the second corporation, determined in accordance with the rules of § 1.697-1(e); and

(2) Any asset so treated as held proportionately by the first corporation which is used or held for use in a trade or business by the second corporation in a trade or business shall be treated as so used or held for use by the first corporation; and
(iii) Interests in the second corporation held by the first corporation are not themselves taken into account as U.S. real property interests (regardless of whether the second corporation is a U.S. real property holding corporation) or as trade or business assets. However, the first corporation shall not be treated as holding a proportionate share of assets in the hands of the second corporation are subject to the rules of §1.318-4T(f)(3) (concerning the trade or business assets of investment companies). A determination of what portion of the assets of the second corporation are considered to be held by the first corporation shall be made as of the applicable dates for determining whether the first corporation is a U.S. real property holding corporation.

A "controlling interest" means 50 percent or more of the fair market value of all classes of stock of the corporation, determined as of the applicable determination date. In determining whether a corporation holds a controlling interest in another corporation, section 318(a) shall apply except that sections 318(a)(2)(C) and (3)(C) are applied by substituting the phrase "50 percent" for "50 percent.") However, a corporation that does not directly hold any interest in a second corporation shall not be treated as holding a controlling interest in the second corporation by reason of the application of section 318(a)(3)(C). The rules of this paragraph (e)(3) apply successively upward through the chain of ownership.

Example (1.) Nonresident alien individual B owns all of the stock of domestic corporation DC. DC's only assets are real property located outside the United States worth $2,000,000. The controlling interest in DC is held by US1, a U.S. real property holding corporation. US1 holds a controlling interest in US2 (75 percent), by reapplying the rules of paragraph (e)(3) of this section successively upward through the chain of ownership, US1's stock in US2 is not taken into account, and US1 is treated as holding a portion of the country D real estate held by US2 and the portion US2 is treated as holding proportionately.

US1's portion of the country D real estate is $600,000, determined by multiplying US1's percentage ownership interest (75 percent) by the fair market value ($800,000) of the country D real estate. US2's portion of the U.S. real estate which US2 is treated as owning is $900,000, determined by multiplying US1's percentage ownership interest (75 percent) by the fair market value ($1,200,000) of US2's portion of U.S. real estate held by US3. US1 is a U.S. real property holding corporation and US2 is a domestic corporation, its stock is a U.S. real property interest, and B's gain or loss on the disposition of US1 stock within 5 years of the current determination date would be treated as effectively connected with a U.S. trade or business (zero). Because US1 is a U.S. real property holding corporation and US2 is a domestic corporation, US2's stock in US1 is a U.S. real property interest, and B's gain or loss on the disposition of US2 stock within 5 years of the current determination date would be treated as effectively connected with a U.S. trade or business (zero). Because US1 is a U.S. real property holding corporation and US2 is a domestic corporation, US2's stock in US1 is a U.S. real property interest, and B's gain or loss on the disposition of US2 stock within 5 years of the current determination date would be treated as effectively connected with a U.S. trade or business (zero).
Example (4). Nonresident alien individual C owns all of the stock of domestic corporation DC1. DC1's only assets are 25 percent of the market value of all asses of stock of domestic corporation DC2, and a parcel of U.S. real estate with a fair market value of $100,000. The stock of DC2 is not an asset used or held for use in DC1's trade or business. DC2's only assets are a building located in the U.S. with a fair market value of $100,000 and manufacturing equipment and inventory with a fair market value of $200,000. DC1 is not a U.S. real property holding corporation. Since DC1 does not hold a controlling interest in DC2, the rules of this paragraph (e) do not apply to treat DC1 as holding a portion of the assets held by DC2.

In addition, since DC1 is not a U.S. real property holding corporation, its stock does not constitute a U.S. real property interest. Therefore, for purposes of determining whether DC1 is a real property holding corporation, its interest in DC2 is not taken into account. Since DC1's only other asset is a parcel of U.S. real estate, DC1 is a U.S. real property holding corporation, and C's gain or loss on the disposition of DC1 stock within 5 years of the current determination date would be subject to the provisions of section 697(a).

(4) Co-application of rules of this paragraph (e). The rules of this paragraph (e) apply in conjunction with one another for purposes of determining whether a corporation is a U.S. real property holding corporation. The rule of this paragraph (e)(4) is illustrated by the following example. In the example fair market value is determined as of the applicable determination date in accordance with paragraph (c)(4)(f) of this section.

Example. Nonresident alien individual B holds 25 percent of the stock of domestic corporation US. US's only asset is 10 percent of the stock of foreign corporation FC1. FC1's only asset is 40 percent of the stock of foreign corporation FC2. FC2's only asset is 50 percent of the capital of domestic partnership DP. DP's percentage ownership interest in US is 50 percent. DP's only asset is a parcel of U.S. real estate with a fair market value of $10,000,000. In determining whether US is a U.S. real property holding corporation, the rules of this paragraph (e) apply in conjunction with one another. Consequently, under paragraph (e)(2) of this section FC2 is treated as holding U.S. real estate with a market value of $5,000,000 (50 percent of $10,000,000), its pro rata share of real estate held by DP. Under paragraph (e)(3) of this section, FC1 is treated as holding 100 percent of the assets of FC2 (U.S. real estate with a fair market value of $5,000,000). FC1, therefore, is a U.S. real property holding corporation. Under paragraph (e)(1) of this section, the stock of FC1 is treated as U.S. real property interest. US is a U.S. real property holding corporation because 100 percent of the interest in the stock of FC1 is U.S. real property interests. As US is a U.S. real property holding corporation and is a domestic corporation, the stock of US is a U.S. real property interest, and B's gain or loss from the disposition of US within 5 years of the current determination date will be subject to the provisions of section 697(a).

(f) Termination of U.S. real property holding corporation status—(1) In general. A U.S. real property holding corporation may voluntarily determine its status as of the date of any acquisition or disposition of assets. If the fair market value of its U.S. real property interests on such date no longer equals or exceeds 50 percent of the fair market value of all assets described in paragraphs (d) and (e) of this section, such corporation shall cease to be a U.S. real property holding corporation as of such date, and on the day that is five years after such date interests in such corporation shall cease to be treated as U.S. real property interests unless subsequent transactions within the five-year period have caused the fair market value of the corporation's U.S. real property interests to equal or exceed 50 percent of the fair market value of assets described in paragraphs (d) and (e) of this section. A corporation that determines that interests in it have ceased to be U.S. real property interests pursuant to the rules of this paragraph (f)(1) may inform the Internal Revenue Service, as provided in paragraph (h) of this section.

(2) Early termination. Interests in a U.S. real property holding corporation shall immediately cease to be U.S. real property interests as of the first date on which the following conditions are met—

(i) The corporation does not hold any U.S. real property interests, and

(ii) All of the U.S. real property interests directly or indirectly held by such corporation at any time during the previous five years (but disregarding any disposed of before June 19, 1980) either (A) were directly or indirectly disposed of in transactions in which the full amount of the gain (if any) was recognized or (B) ceased to be U.S. real property interests by reason of the application of this paragraph (f)(1) to one or more other corporations.

For purposes of this paragraph (f)(2), a corporation that disposes of all its U.S. real property interests other than a lease that has a fair market value of zero will be considered to have disposed of all of its U.S. real property interests, provided that the leased property is used in the conduct of the corporation by a trade or business in the United States. Such a lease may include an option to renew, but only if such option is for a renewal at fair market rental rates prevailing at the time of renewal.

(g) Establishing that a corporation is not a U.S. real property holding corporation—(1) Foreign persons disposing of interests—(i) In general. A foreign person disposing of an interest in a domestic corporation (other than an interest solely as a creditor) must establish that the interest was not a U.S. real property interest as of the date of disposition. Either by:

(A) Obtaining a statement from the corporation pursuant to the provisions of subdivision (ii) of this paragraph (g)(1), or

(B) Obtaining a determination by the Director of the Foreign Operations District ("Director") pursuant to the provisions of subdivision (iii) of this paragraph (g)(1).

If the foreign person does not establish by either method that the interest was not a U.S. real property interest then the interest shall be presumed to have been a U.S. real property interest if the foreign person has caused the fair market value of the property disposed of to be as follows:

(i) The interest was not a U.S. real property interest as of the first date on which the following conditions are met—

(A) For purposes of this paragraph (f), the corporation does not hold any U.S. real property interests, and

(B) All of the U.S. real property interests directly or indirectly held by such corporation at any time during the previous five years (but disregarding any disposed of before June 19, 1980) either (A) were directly or indirectly disposed of in transactions in which the full amount of the gain (if any) was recognized or (B) ceased to be U.S. real property interests by reason of the application of this paragraph (f)(1) to one or more other corporations.

(2) Statement from corporation—(A) In general. A foreign person disposing of an interest in a domestic corporation may establish that the interest was not a U.S. real property interest as of the date of disposition by requesting and obtaining from the corporation a statement that:

(i) The interest was not a U.S. real property interest as of that date, and

(ii) The corporation has complied with the requirements of paragraph (b) of this section.

A foreign person that requests and obtains such a statement is not required to forward the statement to the Internal Revenue Service and is not required to take any further action to establish that the interest disposed of was not a U.S. real property interest. To qualify under this rule, the foreign person must obtain the corporation’s statement no later than the date, including any extensions, on which a tax return would otherwise be due with respect to a disposition. A
foreign person that relies in good faith upon a statement from the corporation is not thereby excused from filing a return and paying any taxes and interest due thereon if the corporation’s statement is later found to have been incorrect. However, such reliance shall be taken into account in determining whether the foreign person shall be subject to any penalty for the previous failure to file. However, another person that knew or had reason to know that a corporation’s statement was incorrect is not entitled to rely upon such statement and shall remain liable for all applicable penalties.

(B) Coordination with section 1445. Pursuant to section 1445 and regulations thereunder, withholding of tax is not required with respect to a foreign person’s disposition of an interest in a domestic corporation, if the transferor is furnished with a statement by the corporation under paragraph (h) of this section that the interest is not a U.S. real property interest. A foreign person that obtains a corporation’s statement for that purpose prior to the date of disposition may also rely upon the statement for purposes of this paragraph (g)(3)(i), unless the corporation informs the foreign person (pursuant to paragraph (h)(1)(iv)(C) of this section) that it became a U.S. real property interest as of the date of disposition, and

(ii) Determination by Director—(A) In general. A foreign person disposing of an interest in a domestic corporation may establish that the interest was not a U.S. real property interest as of the date of disposition by requesting and obtaining a determination to that effect from the Director. Such a determination may be requested pursuant to the provisions of subdivision (B) or (C) of this section. A request for a determination should be addressed to: Director, Foreign Operations District, 1325 K St. N.W., Washington, D.C. 20225. A foreign transferee who has requested a determination by the Director pursuant to the rules of this paragraph (g)(1)(i) is not thereby excused from filling a return and paying any tax due by the date, including any extensions, on which such return and payment would otherwise be due with respect to a disposition. If the Director subsequently determines and notifies the foreign transferee that the interest was not a U.S. real property interest, the foreign transferee shall be entitled to a refund of any taxes, penalties, and interest paid by reason of the application of section 897(a) pursuant to the rules of paragraph (g)(1)(i) of this section, together with any interest otherwise due on such refund, if a claim for refund is made within the applicable time limits.

(B) Determination based on Director’s information. A foreign person may request that the Director make a determination based on information contained in the Director’s records, if:

(1) The foreign person made a request to the corporation for information as to the status of its interest no later than the 30th day before the date, including any extensions, on which a tax return would otherwise be due with respect to a disposition, and

(ii) Statement from corporation. A corporation may determine whether or not an interest in a second corporation is a U.S. real property interest as of its own determination date by obtaining from the second corporation a statement that:

(A) The interest was not a U.S. real property interest as of that date, and

(B) The corporation has complied with the requirements of paragraph (h)(1) of this section.

A corporation that requests and obtains such a statement is not required to forward the statement to the Internal Revenue Service that it is a U.S. real property interest. If the second corporation’s statement is later found to have been incorrect, the first corporation shall not be subject to penalties arising out of past failures to comply with the requirements of section 897 or 1445, if such failures were attributable to reliance upon the second corporation’s statement. By the 90th day following receipt of a notification from the Service or from the second corporation that a prior statement was incorrect, the first corporation must redetermine its status (as of its most recent determination date) and if appropriate notify the Internal Revenue Service that it is a U.S. real property holding corporation in accordance with paragraph (h)(1)(ii)(C) of this section.

(2) Corporations determining U.S. real property holding corporation status—(i) In general. A corporation that must determine whether it is a U.S. real property holding corporation, and that holds an interest in another corporation (other than a controlling interest as defined in paragraph (e)(3) of this section), must determine whether or not that interest was a U.S. real property interest as of its own determination date, by either:

(A) Obtaining a statement from the second corporation pursuant to the provisions of subdivision (ii) of this paragraph (g)(2);

B) Obtaining a determination by the Director pursuant to the provisions of subdivision (iii) of this paragraph (g)(2); or

(C) Making an independent determination pursuant to the provisions of subdivision (iv) of this paragraph (g)(2).
determination to that effect from the Director. Such a determination may be requested pursuant to the provisions of subdivision (B) or (C) of this paragraph (g)(i). A request for a determination must be addressed to: Director, Foreign Operations District, 1225 K St. NW., Washington, D.C. 20225. A corporation that has requested a determination by the Director pursuant to the provisions of this paragraph is not thereby excused from taking any action required by section 897 or 1445 by the date on which such action would otherwise be due. However, the Director may grant a reasonable extension of time for the satisfaction of any requirement if the Director is satisfied that the corporation has not sought a determination pursuant to this paragraph (g)(i) for a principal purpose of delay.

(B) Determination based on Director's information. A corporation, may request that the Director make a determination based on information contained in the Director's records, if:

(1) The corporation has made a request to the second corporation for information as to the status of its interest no later than the fifth day following the first corporation's determination date, and

(2) The second corporation failed to respond to such request by the 30th day following the date the request was delivered to the second corporation.

Pending his resolution of such a request, the Director will generally grant an extension with respect to the time-of-status notification rule of paragraph (h)(1)(i)(D) of this section. If the Director is unable to make a determination based on information available to him, he shall inform the corporation that the interest must be treated as a U.S. real property interest unless the corporation subsequently obtains either the necessary statement from the second corporation or a determination pursuant to paragraphs (g)(2)(iii)(C) or (g)(2)(iv) of this section.

(C) Determination based on information supplied by corporation. A corporation may request that the Director make a determination based on information supplied by the corporation. Such information may be drawn, for example, from annual reports, financial statements, or records of the second corporation, and must establish the satisfaction of the Director that the interest in the second corporation was not a U.S. real property interest as of the first corporation's determination date.

(D) Determination by Director on his own motion. Notwithstanding any other provision of this section, a corporation shall not treat an interest in a second corporation as a U.S. real property interest if the corporation is notified that the Director has upon his own motion determined that the interest in the second corporation is not a U.S. real property interest.

(iv) Independent determination by corporation. A corporation may independently determine whether or not an interest in a second corporation was a U.S. real property interest at the first corporation's own determination date. Such determination must be based upon the best evidence available, drawn from annual reports, financial statements, records of the second corporation, or from any other source, that demonstrates to a reasonable certainty that the interest in the second corporation was not a U.S. real property interest. A corporation that makes an independent determination pursuant to this paragraph (g)(2)(iv) shall be subject to the special notification rule of paragraph (h)(1)(ii)(D) of this section. If the Director subsequently determines that the corporation's independent determination was incorrect, the corporation shall be subject to penalties for any past failure to comply with the requirements of section 897 or 1445 only if the corporation's determination was unreasonable in view of facts that the corporation knew or had reason to know.

(3) Requirements not applicable. If at any time during the calendar year any class of stock of a corporation is regularly traded on an established securities market, the requirements of this paragraph (g) shall not apply with respect to any holder of interest in such corporation other than a person who holds an interest described in §1.697-1(c)(2)(i) or (ii). For example, a corporation determining whether it is a U.S. real property holding corporation need not ascertain from a regularly traded corporation in which it neither holds, nor has held during the period described in section 697(c)(1)(A)(ii), more than a 5 percent interest whether that regularly traded corporation is itself a U.S. real property holding corporation. In addition, the requirements of this paragraph (g) do not apply to any holder of an interest in a domestically-controlled REIT, as defined in section 897(b)(4)(B).

(b) Notice requirements applicable to corporations—(1) Domestic corporations with foreign interest-holders—(i) In general. A domestic corporation, any interest in which is known by the corporation to be held by a foreign person, must determine whether it is a U.S. real property holding corporation in accordance with the rules of this section. The existence of a foreign interest-holder is known by a corporation if such information is included on the books and records of the corporation or its agent (including a transfer agent), is known by its directors or officers, or is known by employees who in the course of their employment have reason to know such information.

If such a corporation determines pursuant to the rules of paragraph (b) of this section that it is a U.S. real property holding corporation, it must comply with the requirements of section 1445 and regulations thereunder, concerning withholding of tax upon certain distributions of property. If such a corporation determines that it is not a U.S. real property holding corporation, it must inform the Internal Revenue Service of its determination in the manner described in subdivision (ii) of this paragraph (h)(1).

(ii) Statements to Internal Revenue Service. (A) Non real property holding corporation statement. A domestic corporation, any interest in which is known to be held by a foreign person, that determines that it is not a U.S. real property holding corporation on each of the applicable determination dates in a given taxable year, must attach a statement to its income tax return for that year, informing the Internal Revenue Service that it has determined that it is not a U.S. real property holding corporation. With respect to taxable years ending after June 16, 1989, for which a return was filed before the date of publication of final regulations in the Federal Register, such a statement must be separately delivered to the Internal Revenue Service office where the corporation filed its most recent income tax return no later than April 1, 1985. If the statement is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery.

(B) Early termination of real property holding corporation status. A corporation that determines during the course of its taxable year that interests in it have ceased to be U.S. real property interests pursuant to the rules of paragraph (f) of this section may immediately notify the Internal Revenue Service of that determination. Such notification will enable foreign interest-holders to dispose of their interests without being subject to section 697(a), as provided in paragraph (g) of this section. No particular form is required for the statement, which must set forth the name, address, place of incorporation, and identification number of the corporation, the last date after June 16, 1989, (if any) on which the
corporation qualified as a U.S. real property holding corporation, and a statement that the corporation has determined that it was not a U.S. real property holding corporation on any applicable determination date during the taxable year. The calculations upon which such determination is based need not be included. The statement must be signed by a responsible corporate officer, who must verify under penalty of perjury that the statement is true and correct to his knowledge and belief.

(C) Change in status. A corporation that had previously informed the Internal Revenue Service that it was not a U.S. real property holding corporation and that subsequently attains such status on a determination date must deliver a notification of such change of status to the Internal Revenue Service office where the corporation filed its most recent income tax return within 30 days of the determination date. If the notification is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. No particular form is required for such notification, which must set forth the name, address, place of incorporation, identification number of the corporation, and applicable determination date, as well as the statement that the corporation has determined that it became a U.S. real property holding corporation on that date.

(iii) Supplemental statements—(A) By corporations with substantial intangible assets. A corporation that is subject to the requirements of subdivision (ii) of this paragraph (h)(1) (or that voluntarily complies with those requirements) must submit a supplemental statement to the Internal Revenue Service if—

(1) Such corporation values any of the intangible assets described in § 1.897-1(f)(1)(ii) (other than goodwill or going concern value) by a method other than the purchase price or book value methods described in § 1.897-1(o)(4); and

(2) The fair market value of such intangible assets equals or exceeds 25 percent of the total of the fair market values of the assets the corporation is considered to hold in accordance with the provisions of paragraphs (d) and (e) of this section.

The supplemental statement must inform the Internal Revenue Service that the corporation meets the criteria of subdivisions (1) and (2) of this paragraph (h)(1)(iii)(A), and must summarize the methods and calculations upon which the corporation's determination of the fair market value of its intangible assets is based. In addition, the supplemental statement must list any intangible assets that were purchased from any person that have been valued by the corporation at an amount other than their purchase price, and must provide a justification for such a departure from the purchase price. The supplemental statement must be attached to or incorporated in the statement required by paragraph (h)(1)(ii) of this section.

(B) Corporation not valuing goodwill or going concern value at purchase price. A corporation that is subject to the requirements of subdivision (ii) of this paragraph (h)(1) (or that voluntarily complies with those requirements) must submit a supplemental statement to the Internal Revenue Service if such corporation values goodwill or going concern value pursuant to § 1.897-1(o)(4); the supplemental statement must set forth that it is made pursuant to this paragraph (h)(1)(iii)(B); and must summarize the methods and calculations upon which the corporation's determination of the fair market value of such intangible assets is based. In addition, the supplemental statement must list any such assets that were purchased from any person that have been valued by the corporation at an amount other than their purchase price, and must provide a justification for such a departure from the purchase price. The supplemental statement must be attached to or incorporated in the statement required by paragraph (h)(1)(ii) of this section.

(C) Corporation using alternative U.S. real property holding corporation test. A corporation that is subject to the requirements of subdivision (ii) of this paragraph (h)(1) (or that voluntarily complies with those requirements) must submit a supplemental statement to the Internal Revenue Service if—

(1) Such corporation utilizes the rule of paragraph (b)(2) of this section (regarding the book values of assets held by the corporation) to presume that it is not a U.S. real property holding corporation; and

(2) Such corporation is engaged in or is planning to engage in a trade or business of mining, farming, or forestry, or of buying and selling or developing real property, or of leasing real property to tenants.

The supplemental statement must inform the Internal Revenue Service that the corporation meets the criteria of subdivisions (1) and (2) of this paragraph (h)(1)(iii)(B), and must be attached to or incorporated in the statement required by paragraph (h)(1)(ii) of this section.

(D) Corporation determining real property holding corporation status of second corporation. A corporation that is subject to the requirements of subdivision (ii) of this paragraph (h)(1) (or that voluntarily complies with those requirements) must submit a supplemental statement to the Internal Revenue Service if such corporation independently determines whether or not an interest in a second corporation is a U.S. real property interest, pursuant to paragraph (g)(2)(iv) of this section. The supplemental statement must set forth that it is made pursuant to this paragraph (h)(1)(iii)(D) and must briefly summarize the facts upon which the corporation's determination is based and the sources of the determination relied upon by the corporation. The supplemental statement must be attached to or incorporated in the statement required by paragraph (h)(1)(ii) of this section.

(iv) Statements to foreign interest-holders—(A) In general. A domestic corporation must, within 30 days after receipt of an inquiry from a foreign person holding an interest in it, inform that person whether its interest constitutes a U.S. real property interest pursuant to the rules of this section and whether or not it has properly notified the Internal Revenue Service. The statement must be dated and signed by a responsible corporate officer, who must verify under penalties of perjury that the statement is correct to his knowledge and belief.

(B) Required determination. For purposes of the statement required by this paragraph (h)(1)(iv), an interest in a corporation is a real property interest if the corporation was a U.S. real property holding corporation on any determination date during the 5-year period ending on the date specified in the interest-holder's request, or on the date such request was received if no date is specified (or during such shorter period ending on that date as is applicable pursuant to section 897(c)(2)(A)(ii)). Thus, if a corporation has filed the statement required by paragraph (h)(1)(ii) of this section with the Internal Revenue Service for each of its previous four taxable years, and it has not become a U.S. real property holding corporation on any determination date that preceded the date of disposition during the current taxable year, then the foreign person's
interest will not constitute a U.S. real property interest.

(C) Change in status. If a corporation provides a statement to an interest-holder prior to a disposition (for purposes of section 1445) and that corporation becomes a U.S. real property holding corporation within 30 days of the date of that statement, then the corporation must notify the interest-holder of the date on which it becomes a U.S. property holding corporation. Such notification must be delivered by the 10th day following the date on which the corporation became a U.S. property holding corporation.

(D) Corporation that has not previously made determinations or filings. If a corporation did not file the statements required by paragraph (h)(1)(ii) of this section in any of the previous four years because it did not know at that time that a foreign person held an interest in it, such corporation must immediately determine whether it was a U.S. real property holding corporation on any determination date during the period ending on the date of disposition for such shorter period as is applicable pursuant to section 897(o)(1)(A)(ii). However, no determination need be made with respect to any period during which the foreign person making the request did not hold an interest in it. Such a corporation may take up to 60 days to make such a determination and to prepare and deliver its response to the foreign person. In addition such corporation must within that period deliver the required notifications to the Internal Revenue Service, with respect to the disposition, by the later of-—

(i) April 30, 1985, or

(ii) The 30th day following the corporation's receipt of an inquiry from a foreign person concerning the status of an interest previously disposed of.

(3) Liquidated corporations. If a domestic corporation was liquidated at any time after June 18, 1985, and before January 30, 1985, then the requirements of paragraph (h) of this section may be fulfilled for such corporation by:

(i) any person winding up the affairs of the corporation,

(ii) any person empowered to sue or be sued in the name of the corporation,

(iii) any of the last officers of the corporation.

A statement or notification pursuant to paragraph (h) of this section that is prepared by any of those persons must be signed by the preparer and verified as true, correct, and complete to the best of the preparer's knowledge and belief. Fulfillment of the requirements of paragraph (h) of this section pursuant to the rules of paragraph (i)(3) will permit former interest holders of the corporation to comply with the requirements of paragraph (g) of this section and obtain relief from penalties pursuant to paragraph (j)(3) of this section.

(4) Date of delivery. If any statement or other document required by this paragraph (i) is delivered by United States mail, the provisions of section 7502 and regulations thereunder shall apply in determining the date of delivery.

(5) Director's discretion to waive penalty. Notwithstanding any other provision of section 897 or the regulations thereunder, the Director of the Foreign Operations District may waive any penalty that a person would otherwise be subject to for a failure to comply with any requirement of § 1.897-1 through 1.897-4, if the Director is satisfied that the failure was due to reasonable cause and not willful neglect.

§ 1.897-3 Election by foreign corporation to be treated as a domestic corporation under section 897.

(a) Purpose and scope. This section provides rules pursuant to which a foreign corporation may elect under section 897(t) to be treated as a domestic corporation for purposes of sections 897 and 1445, and the regulations thereunder. A foreign corporation with respect to which an election under section 897(t) is in effect is subject to all rules under sections 897 and 1445 that apply to domestic corporations. Thus, for example, if a foreign corporation that
has made an election under section 897(i) is a U.S. real property holding corporation, interests in it are U.S. real property interests that are subject to withholding under section 1445, and any gain or loss from the disposition of such interests by a foreign person will be treated as effectively connected with a U.S. trade or business under section 897(a). Similarly, if a foreign corporation makes an election under section 897(i), its distribution of a U.S. real property interest pursuant to section 301 will be subject to the carryover basis rules of section 897(f). However, an interest in an electing corporation is not a U.S. real property interest if following the election the interest is described in section 897(c)(2)(F) or § 1.897-1(c)(2) (subject to the exceptions of subdivisions (i) and (ii) of that section). In addition, section 897(d) will not apply to any distribution of a U.S. real property interest by such corporation or to any sale or exchange of such interest pursuant to a plan of complete liquidation under section 337. A foreign corporation that makes an election under section 897(i) shall not be treated as a domestic corporation for purposes of any other provision of the Code or regulations, except to the extent that it is required to consent to such treatment as a condition to making the election. For further information concerning the effect of an election under section 897(i) upon the withholding requirements of section 1445, see § 1.1445-7T. An election under section 897(i) is the exclusive remedy of any foreign person claiming discriminatory treatment under any treaty with respect to the application of sections 897, 1445, and 6031C to a foreign corporation. Therefore, if a corporation does not make an effective election, relief under a nondiscrimination treaty of any treaty shall not be otherwise available with respect to the application of sections 897, 1445, and 6031C to such corporation.

(b) General conditions. A foreign corporation may make an election under section 897(i) only if it meets all three of the following conditions.

(1) Holding a U.S. real property interest. The foreign corporation must hold a U.S. real property interest at the time of the election. This condition is satisfied when a U.S. real property interest is acquired simultaneously with the effective date of an election. For example, this condition is satisfied when real property is acquired in an exchange described in section 351 that is carried out simultaneously with the effective date of the election. This condition is also satisfied by a corporation that indirectly holds a U.S. real property interest through a partnership, trust, or estate.

(2) Entitlement to nondiscriminatory treatment. The foreign corporation must be entitled to nondiscriminatory treatment with respect to its U.S. real property interest under any treaty to which the United States is a party. Where the corporation indirectly holds a U.S. real property interest through a partnership, trust, or estate, the corporation itself must be entitled to nondiscriminatory treatment with respect to such property interest.

(3) Submission of election in proper form. The foreign corporation must submit the requirements of paragraph (c) of this section respecting the manner and form in which an election must be submitted.

(c) Manner and form of election. An election under section 897(i) is made by filing the materials described in subparagraphs (1) through (5) of this paragraph (c) with the Director Foreign Operations District, 1325 K St. NW, Washington, D.C. 20225. The required items may be incorporated in a single document.

(1) General statement. The foreign corporation must supply a general statement indicating that an election under section 897(i) is being made. The general statement must be signed by a responsible corporate officer, who must verify under penalty of perjury that the statement and all other documents submitted pursuant to the requirements of this paragraph (c) are true and correct to his knowledge and belief. No particular form is required for the statement, which must set forth—

(i) The name, address, identifying number (if any), and place and date of incorporation of the foreign corporation;

(ii) The treaty and article under which the foreign corporation is seeking nondiscriminatory treatment;

(iii) A description of the U.S. real property interests held by the corporation, either directly or through a partnership, trust, or estate, including the dates such interests were acquired, the corporation's adjusted bases in such interests, and their fair market values as of the date of the election for book purposes and as of the date the election is in effect; and

(iv) A list of all dispositions of any interests in the foreign corporation after December 31, 1979, and before June 19, 1980, between related persons (as defined in section 482), giving the name and address of each related person to whom the interest was transferred, the transferor's basis in the interest transferred, and the amount of any nontaxed gain as defined in section 1125(d) of Pub. L. 96-489.

(2) Waiver of treaty benefits. The foreign corporation must submit a binding agreement to waive the benefits of any U.S. treaty with respect to any gain or loss from the disposition of a U.S. real property interest during the period in which the election is in effect.

(3) Consent to be taxed. The foreign corporation must submit a binding agreement to treat as though it were a domestic corporation any gain or loss that is recognized upon—

(i) The disposition of any U.S. real property interest during the period in which the election is in effect, and

(ii) The disposition of any property that it acquired in exchange for a U.S. real property interest in a nonrecognition transaction (as defined under section 897(e)) during the period in which the election is in effect.

(4) Interest-holders' consent to election. (i) A foreign corporation must submit both a signed consent to the making of the election and a waiver of U.S. treaty benefits with respect to any gain or loss from the disposition of an interest in the corporation from each person who holds an interest in the corporation on the date the election is made. In the case of a corporation any class of stock of which is regularly traded on an established securities market at any time during the calendar year, the signed consent and waiver need only be provided by a person who holds an interest described in § 1.897-1(c)(2)(i) or (ii) (determined after application of the constructive ownership rules of section 897(c)(6)(C). The foreign corporation must also include with the signed consent and waivers a list that identifies and describes the interest in the corporation held by each interest holder, including the type and amount of such interest and its fair market value as of the date of the election.

(ii) Corporation's retention of interest-holders' consents. A corporation need not file the consents and waivers of its interest-holders as required by paragraph (c)(4)(i) of this section, if it instead complies with the requirements of subdivisions (A) through (D) of this paragraph (c)(4)(ii).

(A) The corporation must place a legend on each outstanding certificate for shares of its stock that reads substantially as follows: “(Name of corporation) has made an election under section 897(i) of the United States Internal Revenue Code to be treated as a U.S. corporation for certain tax
purposes, and any purchaser of this interest may therefore be required to withhold tax at the time of the purchase. The corporation must certify that the foregoing requirement has been met and that it will place an equivalent legend on every stock certificate that is issued while the election under section 897(i) is in effect and the corporation retains the consents and waivers of its interest-holders under the rules of this paragraph (c)(4)(ii). However, with respect to any registered certificate issued prior to January 30, 1935, in lieu of placing a legend on the certificate the corporation may certify that it will provide the purchaser of the interest with a copy of the legend at the time the certificate is surrendered for issuance of a new certificate.

(B) The corporation must include with its election a statement that the corporation has received both a signed consent to the making of the election and a waiver of U.S. treaty benefits with respect to any gain or loss from the disposition of an interest in the corporation from each person who holds an interest in the corporation on the date the election is made. In the case of a corporation, any class of stock of which is regularly traded on an established securities market at any time during the calendar year, the signed consent and waiver need only be provided by a person who holds or has held an interest described in §1.697-1(c)(2)(iii) (A) or (B) (determined after application of the constructive ownership rules of section 897(c)(6))(C).

(C) The corporation must include with its election a list that describes the interests in the corporation held by each interest-holder. The list need not identify the interest-holders by name, but must set forth the type, amount, and fair market value of the interests held by each.

(D) The corporation must include with its election an agreement that the corporation will retain all signed consents and waivers for a period of three years from the date of the election and supply such documents to the Director within 30 days of his request for production thereof. The Director's review of the signed consents and waivers pursuant to this provision shall not constitute an examination for purposes of section 7605(b).

(5) Statement regarding prior dispositions. The foreign corporation must state that no interest in the corporation was disposed of during the shortest of (A) the period from June 19, 1930, through the date of the election, (B) the period from the date on which the corporation first holds a U.S. real property interest through the date of the election or (C) the five-year period ending on the date of the election. If the corporation cannot state that no such dispositions have been made, it may make the section 897(i) election only if it states that it has complied with the requirements of paragraph (d)(2) of this section.

(d) Time and duration of election—(1) In general. A foreign corporation that meets the conditions of paragraph (b) of this section may make an election under section 897(i) at any time before the first disposition of an interest in the corporation which would be subject to section 897(a) if the election had been made before that disposition, except as otherwise provided in paragraph (d)(2) of this section. The period to which the election applies begins on the date on which the election is made, or such earlier date as is specified in the election, but not earlier than June 19, 1930. Unless revoked, an election applies for the duration of the time for which the corporation remains in existence. An election is made on the date that the statements described in paragraph (c) of this section are delivered to the Foreign Operations District. If the election is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery.

(2) Election after disposition of stock. An election under section 897(i) may be made after any disposition of an interest in the corporation which would have been subject to section 897(a) if the election had been made before that disposition, but only if the requirements of either subdivision (i) or (ii) of this paragraph (d)(2) are met with respect to all dispositions of interests during the period described in paragraph (c)(5) of this section.

(i) There is a payment of an amount equal to any taxes which would have been imposed by reason of the application of section 897 upon all persons who had disposed of interests in the corporation during the period described in paragraph (c)(5) of this section. Such payment must be made by the later of the date the election is made, or the date on which payment of such taxes would otherwise have been due, and must include any interest that would have accrued had tax actually been due with respect to the disposition. As an election made prior to any disposition of interests in the corporation would have been conditioned on a waiver of treaty benefits by the interest-holders, payment of an amount equal to tax and any interest with respect to such prior disposition is required as a condition to making a subsequent election under this subdivision (i) irrespective of the application of any treaty provision. For this purpose, it is not necessary that the payment be made by the person who would have owed the tax if the election under this section had been made prior to the disposition, and that person is under no obligation to supply any interest-holders with records of interests in the corporation. The payment shall be made to the Director, Foreign Operations District. Where the payment is made by a present holder of an interest, the basis of the person's interest in the corporation shall be increased to the extent of the amount paid.

(ii) Each person that acquired an interest in the electing corporation took a basis in the interest that was equal to the basis of the interest in the hands of the person from which the interest was acquired, increased by the sum of any gain recognized by the transferor of the interest and any tax paid under chapter 1 by the person that acquired the interest, if such interest was acquired after June 16, 1930.

(3) Adequate proof of basis. For purposes of meeting the conditions of paragraph (d)(2) (i) or (ii) of this section, a corporation must establish the bases of and amount of gain realized by all persons who disposed of interests in the corporation during the period described in paragraph (c)(5) of this section. See paragraph (g)(3) of this section for an exception to this rule.

(4) Acknowledgment of receipt. Within 60 days after its receipt of an election under section 897(i), the Internal Revenue Service will acknowledge receipt of the election. Such acknowledgment either will indicate that the information submitted with the election is complete or will specify any documents that remain to be submitted pursuant to the requirements of paragraph (c) of this section respecting the manner and form in which an election must be made.

(e) Anti-abuse rule—(1) In general. A corporation that is otherwise eligible to make an election under section 897(i) may do so only by complying with the requirements of subdivision (2) of this paragraph, if during the period described in paragraph (c)(5) of this section—

(i) Prior to receipt of a U.S. real property interest by the corporation seeking to make the election, stock in such corporation (or in any corporation controlled by such corporation) was acquired in a transaction in which the person acquiring such stock obtained an
increase in basis of the stock in the hands of the person from whom it was acquired;

(ii) The full amount of gain realized by the person from whom the stock was acquired was not subject to U.S. tax; and

(iii) The corporation seeking to make the election received the U.S. real property interest in a transaction or series of transactions to which section 897(d)(1)(B) or (e)(2) applies to allow for nonrecognition of gain.

(2) Recognition of gain. A corporation described in subparagraph (1) of this paragraph (e) may make an election under section 897(i) only if it pays an amount equal to the tax on the full amount of gain realized by the transferees of the stock of such corporation (or of any corporation controlled by it) as the transaction described in paragraph (2)(e) of this section. However, such amount must be paid only if the stock of the corporation seeking to make the election (or the stock of a corporation controlled by it) would have constituted a U.S. real property interest had it (or a corporation controlled by it) made the election before that acquisition. Such amount must be paid by the later of the date of the election or the date on which such tax would otherwise be due, and must include any interest that would have accrued had tax actually been due with respect to the disposition.

(3) Definition of control. For purposes of this paragraph, a corporation controls a second corporation if it holds 80 percent or more of the total combined voting power of all classes of stock entitled to vote, and 80 percent or more of the total number of shares of all other classes of stock of the second corporation. In a chain of corporations where each succeeding corporation is controlled within the meaning of this subparagraph (3) by the corporation immediately above it in the chain, each corporation in the chain shall be considered to be controlled by all corporations that preceded it in the chain.

(4) Examples. The rules of this paragraph (e) are illustrated by the following examples.

Example 1. Nonresident alien individual X owns 100 percent of the stock of foreign corporation L which was organized in 1981. L’s only asset is a parcel of U.S. real property which it has held since 1981. The fair market value of the U.S. real property held by L on January 1, 1984, is $1,000,000. L’s basis in the property is $200,000. X’s basis in the L stock is $900,000. In June 1, 1984, M, a foreign corporation owned by foreign persons who are unrelated to X, purchases the stock of L from X for $1,000,000 with title passing outside of the United States. Since the stock of L is not a U.S. real property interest, X’s gain from the disposition of the L stock ($800,000) is not treated as effectively connected with a U.S. trade or business under section 897(c). Since X was not engaged in a U.S. trade or business nor present in the U.S. at any time during 1984, such gain is not subject to U.S. tax under section 871. On January 1, 1987, M liquidates L under a plan of liquidation adopted on that same date. Under section 332 of the Code M recognizes no gain on receipt of the parcel of U.S. real property distributed by L in liquidation. Under section 334(b)(1) M takes $500,000 as its basis in the U.S. real property recovered from L. Under section 897(d)(1)(B) no gain would be recognized to L under section 897(d)(1)(A) on the liquidating distribution. As a consequence, no gain is recognized to L under section 336 of the Code. After its receipt of the U.S. real property from L, M seeks to make an election to be treated as a domestic corporation. Thus, M acquired the L stock in a transaction in which it obtained a basis in such stock in excess of the adjusted basis of the stock in L. U.S. tax was not paid on the full amount of the gain realized by X, and M has received the property in a distribution to which section 897(d)(1)(B) applies to provide for nonrecognition of gain to L. Therefore, M may make the election only if it pays an amount equal to the tax on the full amount of X’s gain, pursuant to the rule of subparagraph (e)(2) of this section.

Example 2. Nonresident alien individual X owns 100 percent of the stock of foreign corporation A which owns 100 percent of the stock of foreign corporation B. X’s basis in the A stock is $500,000. A’s basis in the B stock is $500,000. B owns U.S. real property with a fair market value of $1,000,000. B’s basis in the U.S. real property is $500,000. On January 1, 1983, X sells the stock of A to Y, an unrelated individual, for $1,000,000 with title passing outside of the United States. In addition, X was not engaged in a U.S. trade or business nor present in the U.S. at any time during 1985. Since the A stock is not a U.S. real property interest, X’s gain on such disposition is not treated as effectively connected with a U.S. trade or business under section 897(a) and is therefore not subject to U.S. tax under section 871. On July 1, 1987, a plan of liquidation is adopted, and B is liquidated into A. Under sections 332, 334(b)(1), 336, and 897(d)(1)(B), there is no tax to A on receipt of U.S. real property from B and no tax to B on the distribution of the U.S. real property interest to A. After receipt of the property A seeks to make an election under section 897(i). Under the rules of paragraph (e) of this section, A may make the election only if it pays an amount equal to the tax on the full amount of X’s gain. (Assuming that A is a U.S. real property holding corporation, the same result would be required by the rule of paragraph (d)(2) of this section.)

(f) Revocation of election—(1) In general. An election under section 897(i) may be revoked only with the consent of the Commissioner. A request for revocation shall be in writing and shall be addressed to the Director, Foreign Operations District, 1325 K St. NW, Washington, D.C. 20225. The request shall include the name, address, and identifying number of the corporation seeking to revoke the election, and a description of all U.S. real property interests held by the corporation on the date of the request for revocation, including the dates such interests were acquired, the corporation’s adjusted bases in such interests, and their fair market values as of the date of the request (or book value if the corporation is not a U.S. real property holding corporation under the alternative test of § 1.897-7(c)(2)). The request shall be signed by a responsible officer of the corporation under penalty of perjury and shall contain a statement either that the corporation has made no distributions described in subparagraph (2) of this paragraph (f) or that the conditions of that subparagraph have been satisfied. A revocation will be effective as of the date the request is delivered to the Foreign Operations District, unless the Commissioner provides otherwise in his consent to the revocation. If the request is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. The Commissioner will generally consent to a revocation, provided either that there have been no distributions described in subparagraph (2) of this paragraph (f), or that the conditions of that subparagraph have been satisfied. Within 90 days after its receipt of a request to revoke an election under section 897(i), the Internal Revenue Service will acknowledge receipt of the request. Such acknowledgement either will indicate that the information submitted with the request is complete or will specify any information that remains to be submitted pursuant to the requirements of this paragraph (f).

(2) Revocation after distribution. If there have been any distributions of U.S. real property interests by the corporation during the period to which an election made under section 897(i) applies, the Commissioner shall consent to the revocation of such election only if one of the following conditions is met.

(i) The full amount of gain realized by the corporation upon the distribution was subject to U.S. income tax.

(ii) There is a payment of an amount equal to the taxes that would have been imposed upon the corporation by reason of the application of section 897 if the election had not been in effect on the date of the distribution. Such payment must be made by the later of the date of
the request for revocation or the date on which payment of such tax would otherwise have been due, and must include any interest that would have accrued had tax actually been due with respect to the distribution. If under the terms of any treaty to which the United States is a party such distribution would not have been subject to U.S. income tax notwithstanding the provisions of section 897, then this condition may be satisfied by providing a statement with the request for revocation setting forth the treaty and article which would have exempted the distribution from U.S. tax had the election under section 897(i) not been in effect on the date thereof.

(iii) At the time of the receipt of the distributed property, the distributee would be subject to taxation under chapter 1 of the Code on a subsequent disposition of the distributed property, and the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation. For purposes of this paragraph (f)(3)(i)(C), a distributee shall be considered to be subject to taxation upon a subsequent disposition of distributed property only if such distributee waives the benefits of any U.S. treaty that would otherwise render such disposition not taxable by the United States. Such waiver must be attached to the corporation’s request for revocation.

(g) Transitional rules—(1) In general. An election under section 897(i) that was made at any time after June 18, 1980, must be amended to comply with the requirements of paragraphs (b), (c), and (d) of this section. Such amendment must be delivered in writing to the Director, Foreign Operations District by [the date which is 3 months after the date of publication of this document in the Federal Register]. If the amendment is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. An election that is properly amended pursuant to the requirements of this section shall be effective as of the date of the original election.

(2) Corporations previously entitled to make election. A foreign corporation that would have been entitled under the rules of this section to make a section 897(i) election at any time between June 19, 1980, and January 30, 1985, may retroactively make such an election pursuant to the requirements of this section. Such election must be delivered to the Director, Foreign Operations District, by March 1, 1985.

(3) Interests in corporation disposed of prior to publication. Where interests in a corporation were disposed of before January 3, 1984, the requirement of paragraph (d)(2) of this section may be met, notwithstanding the requirement of paragraph (d)(3), by paying a tax that is based upon a reasonable estimate of the gain upon the prior dispositions. Such estimate must be based on all facts and circumstances known to, and ascertainable through the exercise of reasonable diligence by, the corporation seeking to make the election.

§ 1.637-4 Special election under section 897(i) for certain foreign corporations, acquisitions of which were begun before November 26, 1980. (a) In general. This section provides special rules under which certain foreign corporations may make the election under section 897(i) to be treated as domestic corporations for purposes of sections 897 and 6039C. The election may be made if:

(1) The foreign corporation holds a U.S. real property interest;

(2) The foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A) (as it existed prior to its repeal by the Tax Equity and Fiscal Responsibility Act of 1993 (TEFRA), Pub. L. 97-248); and

(3) The 12-month period described in section 334(b)(2)(B) (as it existed prior to its repeal by TEFRA) for the acquisition by purchase of the stock of the foreign corporation began after December 31, 1979, and before November 26, 1980.

A foreign corporation with respect to which an election under this paragraph (a) is in effect is subject to all rules under section 897 and 6039C that apply to domestic corporations, except that in any acquisition of stock of the electing corporation described in section 334(b)(2) (as it existed prior to its repeal by TEFRA) the selling shareholder shall be considered to have disposed of an interest in a foreign corporation, and any gain or loss from the disposition shall not be taken into account by such shareholder pursuant to section 897(a).

If a corporation that has made an election under section 897(k) is a U.S. real property holding corporation, interests in such corporation shall constitute U.S. real property interests in the hands of any foreign person that acquired such interest in an acquisition described in section 334(b)(2) (as it existed prior to its repeal by TEFRA).

(b) No conditions to election. An election under paragraph (a) of this section is not subject to the conditions described in § 1.897-3.

(c) Election procedures. An election under paragraph (a) of this section is made by filing a statement with the Commissioner. No particular form is required for the statement. The statement must provide that an election under section 897(i) is being made. The statement must include the name, address, identifying number (if any), and place and date of incorporation of the foreign corporation, and establish that the requirements of paragraph (a) of this section have been met. The statement must be verified as true and signed by a responsible officer of the foreign corporation under penalty of perjury. The statement shall be forwarded to the District Director, Foreign Operations District, 3253 K Street NW , Washington, D.C. 20007. The rules of § 1.637-3(d) concerning the time and duration of the election of § 1.637-4 concerning revocation of the election, and of § 1.637-3(g)(2) concerning corporations previously entitled to make an election, apply to elections made under this section. Gain not recognized by a foreign corporation electing under section 897(i) and the rules of this section shall not be treated as untaxed gain under section 1125(d)(3) of the Foreign Investment in Real Property Tax Act, Pub. L. 93-453.

Elections properly made under the Temporary Regulations under section 897(i) [26 CFR 6a.897-1 through 6a.897-4] remain valid. In addition, an election that was made prior to publication of the Temporary Regulations shall be considered a valid election if a statement that substantially1 complied with the requirements of this section was filed with any office of the Internal Revenue Service by the election corporation.

(Approved by the Office of Management and Budget under control number 1545-0123)

PART 6a—(AMENDED)

Par. 2. Part 6a is amended by removing §§ 6a.637-1 through 6a.637-4.


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


Renaud A. Pelletier,
Assistant Secretary of the Treasury.

[FR Doc. 84-33783 Filed 12-30-84; 2:25 pm]
BILLING CODE 4820-01-M
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies


ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the New Jersey Division on Civil Rights as a certified 706 Agency.


SUPPLEMENTARY INFORMATION: The Commission has determined that the New Jersey Division on Civil Rights meets the eligibility criteria for certification as a designated 706 agency as established in 29 CFR 1601.75(b). In accordance with 29 CFR 1601.75(c) the Commission hereby amends the list of certified designated 706 agencies to include the New Jersey Division on Civil Rights. Publication of this amendment to § 1601.60 effectuates the designation of the following agency as a certified 706 agency: New Jersey Division on Civil Rights.

List of Subjects in 29 CFR Part 1601
Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—AMENDED

§ 1601.60 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.60 by adding the New Jersey Division on Civil Rights, in alphabetical order.

[42 U.S.C. 2000e-12(a)]

Signed at Washington, D.C. this 26th day of December, 1994.

For the Commission,

Clarence Thomas,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 94-33839 Filed 12-28-94; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT-OF-LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

Display of Office Management and Budget Control Number for Reporting Requirements Without Forms

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Technical amendment.

SUMMARY: This document adds a control number assigned by the Director of the Office of Management and Budget (OMB) to a Department of Labor regulation requiring employers covered by the Occupational Safety and Health Act of 1970 29 U.S.C. 651, et seq., to report fatality and multiple hospitalization accidents. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., requires display of an OMB control number on all information collection provisions. Display of the OMB control number indicates that OMB has approved the reporting requirements contained in the regulation.


FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3897, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8151.

Paperwork Reduction Act

The information collection requirements contained in 29 CFR 1904.6 have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., and assigned OMB control number 1218-0007

List of Subjects in 29 CFR Part 1904
Health statistics, Occupational safety and health, Reporting and recordkeeping requirements.

Text of Amendment
Following the text of 29 CFR 1904.6 add:

[Approved by the Office of Management and Budget under control no. 1218-0007, December 31, 1994]

(29 U.S.C. 657, 673)

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the disapproval of a proposed amendment to the Kentucky Permanent Regulatory Program (hereinafter referred to as the Kentucky Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On June 29, 1984, Kentucky submitted a proposed amendment to its approved program to change approved levels of staffing and budget. After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director of OSM has determined that the amendment does not meet the requirements of SMCRA and the Federal regulations.

Accordingly, the Director is disapproving the amendment. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement this action.


ADDRESSES: Copies of the Kentucky program and the Administrative Record for the Kentucky program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1109 L Street, NW., Washington, DC 20250
Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504
Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.
FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

1. Background
On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 16, 1982 Federal Register notice.

By a transmittal dated June 29, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to change approved levels of staffing and budget. In the proposed amendment Kentucky stated that after operating under prumacy for two years, it has better information for projecting required staffing levels for specific program areas. Kentucky submitted a justification for proposed staffing levels by program area which gave an explanation of and reasons for the changes.

Kentucky's approved program calls for a regulatory program staffing level of 468 by Fiscal Year 1984. The proposed amendment would reduce the program staffing level to 365. Kentucky justified its proposed staffing level decrease by stating that the proposed staffing level is adequate to fulfill responsibilities under prumacy, and that continued progress would be made in Kentucky's program.

Kentucky stated that 539 new permit applications were received between July 1982 and June 1984 and that, at 14 days for each permit review, the proposed staffing level was adequate to accomplish reviews. Kentucky said that the transition permitting backlog would be eliminated by September 1984.

The State maintained that total inspections take 8 hours and partial inspections, 2 hours and that its current level of 122 inspectors was more than adequate to accomplish required inspections at this rate. Kentucky stated that the Cabinet's Office has 30 employees available for surface mining

enforcement even though only 21 are funded for this activity.

Kentucky said that staffing is adequate in the Small Operator Assistance Program, the Landa Unsuitable for Mining Program and other programs.

OSM published a notice in the Federal Register July 24, 1984, announcing receipt of the amendment, and procedures for the public hearing on the adequacy of the amendment (49 FR 29804). The public comment period ended August 23, 1984. Since no one requested a public hearing, the hearing, scheduled for August 20, 1984, was not held.

II. Director's Findings

A. General Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the proposed budget and staffing amendment submitted by Kentucky on June 29, 1984, fails to meet the requirements of SMCRA and the Federal regulations. Section 503(b)(3) of SMCRA requires that the State regulatory authority have sufficient administrative and technical personnel and sufficient funding to regulate mining in accordance with the Act. The Federal regulations require sufficient legal, administrative, and technical staff and sufficient funding to implement the approved program. The State's justification for the reduced levels relies heavily on the assertion that it has been demonstrated that Kentucky has adequately administered all aspects of the State program with existing staff. However, OSM's oversight program previously documented that Kentucky was encountering problems with the Kentucky State Program. The 1983 and 1984 Kentucky annual reports which summarize OSM oversight findings, identify and describe the various program implementation problems.

Among the problems still requiring correction are the following:

• Hydrologic information required in the permitting process and Small Operator Assistance Program does not meet regulatory requirements.

Groundwater monitoring waivers have been granted on the basis of geologic isolation which remains unproved in Kentucky. Approximately 1000 permits may require correction during the upcoming mid-term review.

• Kentucky had been issuing permits even in cases where the legal right to mine has been contested based on interpretation of "broad-form" deeds.

• Result of an OSM special study of bond releases disclosed that the State may not always ensure that the permit meets all required program performance standards at the time of release.

• State inspectors, in general, either do not conduct thorough, complete inspections or they do not consistently cite all violations. OSM, during oversight inspections, finds an average of eight times as many violations as State inspectors find, on the average, on a State complete inspection.

• Kentucky has had problems ensuring that two-acre operations remain under 2 acres and that permits are not improperly issued to operations under common ownership or control.

• Kentucky has not been successful in the prosecution of operators mining illegally and needs to develop new strategies to demonstrate control of unpermitted operations.

In addition, as a result of Judge Flannery's decisions in in Re: Permanent Surface Mining Litigation II, D.D.C. 1984, a substantial number of triples and loading facilities will have to be permitted under the Kentucky program.

B. Specific Findings

1. Kentucky proposes to reduce the approved level of permitting and technical review staff from 99 to 71. Kentucky has underestimated its permitting requirements both in the number of person-hours to process a permit and in the number of permits expected for processing. Kentucky estimates that it takes an average of only 14 person-days to process a permit application. Kentucky projects the number of new permits expected over the next 2 years at 700. Kentucky's earlier projections estimated 700 new permits per year. Kentucky's proposal does not allow for staff time to review permits in accordance with the recent settlement agreement pertaining to certain permit requirement waivers granted on geologic isolation, to review applications for permit revisions, and to review applications from previously exempted 2-acre operations that have expanded beyond the 2-acre limit and must be brought into compliance with SMCRA.

In addition, there is no provision in the Kentucky analysis for the probable influx of permit applications for triples and loading facilities brought under this jurisdiction by Judge Flannery's Round I Decision dated July 6, 1984. In Re: Permanent Surface Mining Regulation Litigation II, Civil Action Number 79-954.

2. Kentucky proposes to reduce the approved level of inspectors from 156 to 122. OSM is particularly concerned about the proposed reduction in inspection staffing in view of Kentucky's
problems in the area of enforcement. OSM cited inspection activities as a significant problem area in its second annual report of oversight activities of the Kentucky program. OSM concluded that inspectors were either not conducting thorough complete inspections or that they did not consistently cite all violations, resulting in a number of violations not being cited. The proposed reduction of staff could worsen this problem.

3. Kentucky's projection of required inspection staff although allowing 5 hours for complete inspections and 2 hours for partial, fails to include time necessary to prepare for litigation or attend hearings in case of legal challenge, and it does not include time for evaluation of alternative enforcement actions.

III. Public Comments

Two commenters responded to the request for comments on the proposed Kentucky staffing amendment. One commenter submitted comments on behalf of the Kentucky Governmental Accountability Project of the Kentucky Resources Council, and the Sierra Club, Cumberland Chapter. This commenter urged disapproval of the amendment, stating that staffing adequacy is "perhaps the most critical component of the State program, and of the success or failure of the State's efforts in enforcing and administering the State program."

This commenter said that the State's record should be examined to determine the adequacy of staffing, since the program has been in operation for two years. The commenter also suggested reviewing OSM's experience in Tennessee to determine staffing requirements. The commenter urged that, in light of problems identified in OSM's annual oversight reports on Kentucky, the State be advised to increase staff rather than to decrease staff.

This commenter stated that Kentucky has not yet demonstrated that it can meet the requirements of the approved State program with its current staff and that the State has not yet met the levels of staffing in its approved program. The commenter pointed to problems of inspection quality and in particular the level of violations cited. The commenter noted that permit reviews were not always adequate and that there was "inordinate and unjustified delay in processing of transition permit applications."

The commenter stated that inspectors in Kentucky are assigned so many inspectable units that inadequate time is available to the inspectors to do proper inspections. The commenter provided numbers to support this statement.

The commenter stated that it is premature for OSM to consider allowing lower staffing levels than previously approved. The commenter said that Kentucky experienced repeated delays in processing permits within the initial period for a number of years, and that the permits "suffer from several categories of substantive inadequacies" such as groundwater "recharge capacity, restoration calculations or plans," PCH determinations, and mineral ownership and right of entry information. The commenter said that Kentucky's estimate of the number of permits to be submitted should be 700 for the next year rather than for the next 2 years, and that Kentucky will need to include projections for permitting of "in excess of five hundred" coal crushing and screening facilities as a result of the recent ruling by Judge Flannery in In Re: Permanent Surface-Mining Litigation.

This commenter recommended that OSM deny the amendment request and require that Kentucky increase its staff level to that in the approved program.

The other commenter represented the Kentucky Coal Association. This commenter supported the State amendment and stated that "existing staffing and funding levels are sufficient to maintain Kentucky's existing program." The commenter said that the staffing and budget of the Kentucky Department of Surface Mining are "more than sufficient to satisfy OSM requirements" and that the permit review workload would decrease after September 15, 1984. The commenter did not provide information or documentation to support or explain his statements.

IV. Director's Decision

The Director has carefully considered Kentucky's request for an amendment and has carefully considered Kentucky's record and the comments submitted by the public on the proposed amendment, and has concluded that the amendment would not meet the requirements of SMCRA and the Federal regulations at this time.

The Director, based on the above findings, is disapproving the Kentucky staffing amendment submitted on June 29, 1984. As indicated in the findings, the amendment fails to meet the requirements of SMCRA and the Federal regulations. The Director is reprimanding Kentucky to meet the approved level of staffing contained in the May 18, 1982 approval of the Kentucky State Regulatory Program by May 1, 1985. Because of the existing problems in Kentucky and the urgent need to acquire sufficient personnel to resolve them, this rule is being made effective immediately.

V. Procedural Matters

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

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

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

3. Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.
2. 30 CFR 917.16 is revised to read as follows:

§ 917.16 Required program amendments.

(a) Pursuant to 30 CFR 732.17, Kentucky is required to submit for OSM's approval the following proposed program amendments by the dates specified. By December 4, 1984, Kentucky shall submit for OSM's approval—

(1) Rules governing the training, examination and certification of blasters; and
(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) Pursuant to 30 CFR 732.17, Kentucky is required to accomplish the following actions or termination of the program approval found in § 917.10 will be initiated on May 1, 1985.

(1) Action to recruit personnel to meet the approved program staffing levels of 408 must be begun upon publication of this notice. No later than February 1, 1985 notices concerning vacant positions must be advertised.

(2) Kentucky must have employed sufficient personnel to reach the approved permanent program level of 408 no later than May 1, 1985. Of the approved permanent program level of 408, a minimum of 156 must be inspection and enforcement personnel.

(3) By the fifth of each month, beginning on February 5, 1985, Kentucky will provide a report to OSM describing the actions taken to achieve the approved program staffing levels by May 1, 1985 and of any additional vacancies which may have occurred during the month.

[FR Doc. 84-33790 Filed 12-29-84; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 935

Approval of Permanent Program Amendments From the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letter dated September 17, 1984, Ohio submitted a notice of proposed program amendment #15 made to conform the Federal rule requirements to shorten the time for maintenance of vegetation on reclaimed "non-D-permit areas" to two consecutive years to two consecutive growing seasons.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendment meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendment. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

The Federal rules at 30 CFR Part 935 which codify decisions on the Ohio program are being amended to implement this action.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone (614) 889-0576.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 Federal Register (47 FR 34688). The approval was conditioned on the correction of 23 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 Federal Register.

II. Discussion of the Amendment

By letter dated September 17, 1984, Ohio submitted a program amendment (#15) to make its rules conform with Federal rules requirements to shorten the time for maintenance of vegetation on reclaimed "non-D-permit areas" from two consecutive years to two consecutive growing seasons. The specific revision is found in paragraph (F) of Ohio rule 935:13-2-15.

OSM published a notice in the Federal Register on October 24, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments.

[49 FR 42745]. The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, the hearing was not held. The public comment period closed November 23, 1984.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on September 17, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below. However, the Ohio rules have not been promulgated as final rules. The Chief of the Division has indicated that Ohio intends to adopt the rules by emergency rulemaking as soon as they are approved by OSM. The Director is approving the rules provided that they are fully promulgated in identical form to the rules submitted to and reviewed by OSM.

OAC Section 1501:13-2-15 Standards for Planting and Revegetation

OAC Section 1501:13-2-15(F)(1)—Ohio has amended the standards for measuring success of revegetation to reflect the standard contained in 30 CFR 715.20(i). These standards are for interim permits, and shorten the time for maintenance of vegetation on reclaimed "non-D-permit areas" from two consecutive years to two consecutive growing seasons. The Federal regulation cited above also defines revegetation success for interim permit areas as two consecutive growing seasons. Therefore, the Director finds that the Ohio rule is no less effective than the Federal regulation.

IV. Public Comments

No public comments were received. Acknowledgments were received from the following Federal agencies: Soil Conservation Service, Farmers Home Administration and the Mine Safety and Health Administration. The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings is approving the September 17, 1984 amendment. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments. However, as noted above, because the Ohio rules have not been fully promulgated, the rules will not take effect for purposes of the SMCRA program until the revised rules have been promulgated as final rules by Ohio.
VI. Procedural Matters

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

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

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

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

List of Subjects in 30 CFR Part 935

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

Date: December 21, 1984.

Wesley R. Booker,
Acting Director, Office of Surface Mining.

PART 935—OHIO

30 CFR 935.15 is amended by adding a new paragraph (k) as follows:

§ 935.15 Approval of regulatory program amendments.

(k) The following amendment submitted to OSM on September 17, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to OSM:


[FR Doc. 84-33791 Filed 12-28-84; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION
Coast Guard

33 CFR Part 144

[CGD 84-090]

Exposure Suits: Requirements for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These rules revise the areas where exposure suits are required for personnel on board mobile offshore drilling units, including foreign flag units, engaged in activities on the Outer Continental Shelf of the United States. Units operating in waters where the water temperature does not present a severe threat of injury due to exposure will continue to be exempted from the requirements, but the boundaries where that exemption applied are changed by recent legislation. This document conforms the regulations to the statutory limitations.

DATES: These amendments become effective on December 30, 1984. Comments will be accepted until February 22, 1985, for inclusion in a report to Congress due April 30, 1985, which will re-evaluate these regulations.

ADDRESS: Send comments to: Commandant, G-CMC/21, U.S. Coast Guard, 2100 2nd Street, S.W., Washington, D.C. 20593.


SUPPLEMENTARY INFORMATION: A Final Rule was published in the Federal Register of February 6, 1984, requiring the carriage of exposure suits on board MODUs operating on the Outer Continental Shelf of the United States, except those operating south of 35 degrees North latitude. Those rules were effective on December 30, 1983.

Subsequently, the Congress perceived a need for more stringent requirements and passed the Coast Guard Authorization Act of 1984 (Pub. L. 98-557), which was signed by the President on October 30, 1984. The Act includes a provision (Sec. 22) that the Secretary of Transportation shall, by regulation, require exposure suits on vessels that operate in the Atlantic Ocean north of 32 degrees North latitude. The Act mandated that these regulations be effective no later than 60 days after the date of enactment.

In view of these legislative requirements, these regulations are published as final rules, without benefit of notice of proposed rulemaking or public comment, and are being made effective in less than 30 days after publication. However, comments are solicited for use in a report to the Congress, due within 6 months of enactment of the Act, evaluating the benefits and disadvantages of extending the regulations to require exposure suits on vessels operating in all waters north of 31 degrees North latitude or south of 31 degrees South latitude.

Drafting Information

The principal persons involved in drafting these regulations are LCDR William M. Riley, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Office of the Chief Counsel.

Discussion of Rules

These rules require certain mobile offshore drilling units (MODUs) operating on the Outer Continental Shelf of the United States to carry exposure suits for all personnel on board. The rules apply to any MODU that is not inspected under the regulations in 40 CFR Subchapter I-A, primarily foreign registered MODUs.

These rules are similar to those for exposure suits on MODUs that are inspected under 48 CFR Subchapter I-A. Those rules are published under a separate document which appears elsewhere in this issue of the Federal Register.

Evaluations

These regulations are considered to be non-major under Executive Order 12291 and non-significant under “Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations” (64 FR 21034; February 25, 1999). A final evaluation has been prepared and placed in the docket and may be inspected or copied at the Office of the Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593.

These regulations are considered exempt from the procedures prescribed in Executive Order 12231 because consideration under the terms of that Order would conflict with the deadline imposed by statute. This fact has been reported to the Director of OMB.

The costs of these rules are negligible. Existing rules require exposure suits on MODUs operating on the Outer Continental Shelf between north of 35 degrees North latitude. No MODUs are currently operating between 32 and 35 degrees North latitude in the Atlantic Ocean. We anticipate that few, if any, MODUs will operate 32 and 35 degrees North latitude that would not be
equipped for work north of 35 degrees. These costs, if any, will be imposed directly on the private sector (the operators of affected MODUs). The operators are expected to pass the costs through to the ultimate consumers of affected maritime services in the form of price increases. However, increases in individual prices will be negligible. There is no effect on federal, state, and local governments except in their capacities as consumers of maritime services. Implementation and enforcement of these rules would be accomplished within the scope of current Coast Guard marine safety activities, so that there will not be any need for additional federal budget commitments.

The primary benefit identified for the rules is to improve the chances of survival for persons entering cold water as the result of a casualty. The Coast Guard cannot predict, with any acceptable degree of confidence, the number of lives that might be saved by these regulations.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, it is certified that this rule will not have a significant impact on a substantial number of small entities. There are no operators of MODUs known to be small entities.

This rule contains no information collection or recordkeeping requirements.

**List of Subjects**

Marine safety, Mobile offshore drilling units, Outer continental shelf activities.

In consideration of the foregoing, title 33 of the Code of Federal Regulations is amended as set forth below.

**SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES**

**PART 144—[AMENDED]**

1. By revising the authority citation for Part 144 to read as follows:


2. By revising §144.20–5 to read as follows:

   §144.20–5 Exposure suits.

   This section applies to each MODU except those operating south of 32 degrees North latitude in the Atlantic Ocean or south of 35 degrees North latitude in all other waters.


   Clyde T. Luck Jr.,
   Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

   [FR Doc. 84–3778 Filed 12–28–84; 8:45 am]

   BILLING CODE 4100–14–M

**33 CFR Part 165**

**[COTP Baltimore MD 85–01]**

**Safety Zone Regulations: Chesapeake Bay, Baltimore Harbor, Baltimore, MD**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Baltimore Inner Harbor, Baltimore, Maryland. This safety zone is required to safeguard watercraft from possible damage during a fireworks display being performed on 31 December 1984. Waterborne traffic will be prohibited from entering, anchoring, or remaining in this safety zone during the time that it is in effect.

**EFFECTIVE DATE:** This regulation becomes effective beginning at 8:30 p.m. Eastern Standard Time, 31 December 1984 and terminates at 12:30 a.m. Eastern Standard Time, 1 January 1985.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander W. G. Schneewees, Chief, Port Operations Department, USCG Marine Safety Office, Baltimore, U.S. Customs House, 40 South Gay St., Baltimore, MD 21202, Tel. (301) 952–5105, FTS 922–5105.

**SUPPLEMENTAL INFORMATION:** A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying the effective date of this safety zone would be contrary to the public interest since action is needed to safeguard watercraft and their occupants on the scheduled fireworks date. It has been determined that this regulation is not a major rule in accordance with Executive Order 12291.

**Drafting Information**

The drafters of this regulation are Lieutenant A. M. Crickard, project officer for the Captain of the Port Baltimore, MD and LCDR Michael Perrone, project attorney, Fifth Coast Guard District Legal Office.

**Discussion of the Regulation**

To prevent possible damage to watercraft and possible injury to their occupants during a Fireworks Display, no watercraft will be permitted to remain in, enter, moor in, anchor in, or transit this safety zone unless specifically authorized by the Captain of the Port, Baltimore, MD. U.S. Coast Guard patrol craft will be on scene to enforce the safety zone, monitoring VHF–FM channels 16 and 13. This action is necessary due to the hazards involved with the location of the barges being used for the display platform and the flammable nature of the fireworks. During the Fireworks Display the boater/spectator will be pre-occupied with the display and could drift or collide into the barges which will be moored for use as the display platform. The fireworks being launched also present an inherent danger. This rule is in response to a request by the Baltimore Office of Promotion and Tourism for Coast Guard assistance in providing traffic control for this event. This action is designed to prevent damage to watercraft and their occupants in the event of a collision with the display barges or a stray pyrotechnic projectile, and will accomplish this end by preventing all such traffic from remaining in or entering that area of the Baltimore Inner Harbor being used to launch the Fireworks Display.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding §165.T0501 to read as follows:

**PART 165—[AMENDED]**

§165.T0501 Safety Zone: Baltimore Inner Harbor, Baltimore, Maryland.

(a) The waters and waterfront facilities located within the following boundaries constitute a safety zone:

- A line beginning at latitude 39°16′44″ N, longitude 76°38′15″ W, thence to latitude 39°16′54″ N, longitude 76°38′15″ W, thence to latitude 39°16′54″ N, longitude 76°38′25″ W, thence to latitude 39°16′58″ N, longitude 76°38′15″ W, thence to 39°16′51″ N, longitude 76°38′03″ W, thence to the point of beginning. The safety zone will commence at 8:30 p.m., Eastern Standard Time, 31 December 1984 and terminate at 12:30 a.m., Eastern Standard Time, January 1, 1985.

(b) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Baltimore, MD.
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[4-4-FRL-2745-4]

Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to a state the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), and in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP). On June 11, 1984, the State of Florida asked EPA to delegate to it authority for the implementation and enforcement of the NESHAP for asbestos, Subpart M, except for § 61.156, Active Waste Disposal Sites. On September 28, 1984, Florida requested a delegation of authority to implement and enforce Subpart M of 40 CFR Part 61.

EPA initially delegated the authority for implementation and enforcement of the NESHAP to the State of Florida. On April 5, 1984, EPA revised the NESHAP for asbestos. On June 11, 1984, the State of Florida requested a delegation of authority to implement and enforce the applicable NESHAP for asbestos, codified as 40 CFR Part 61, Subpart M, except for § 61.156, Active Waste Disposal Sites. On September 28, 1984, Florida requested a delegation of authority to implement and enforce § 61.156.

S U P P L E M E N T A R Y I N F O R M A T I O N: Section 111, in conjunction with sections 101, 110, and 111 of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP).


Upon review, EPA acknowledged the fact that the Agency had delegated complete authority for implementation and enforcement of the NESHAP to the State of Florida in the past; however, some question had arisen as to the legal authority of the State of Florida to carry out that delegation. Consequently, it be it noted that EPA has delegated full authority to implement and enforce Subpart M of 40 CFR Part 61.

On August 23, 1984, Florida requested a delegation of authority for the following recently promulgated NSPS contained in 40 CFR Part 60:

Subpart QQ: Graphic Arts Industry: Publication Rotogravure Printing
Subpart RR: Pressure Sensitive Tape
Subpart VV: Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry
Subpart XX: Bulk Gasoline Terminals

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of June 10, 1982, and granted the State's request in a letter dated November 7, 1984. Florida sources subject to the requirements of Subpart M of 40 CFR Part 61, and Subparts QQ, RR, VV, and XX of 40 CFR Part 60 will now be under the jurisdiction of the State of Florida.


John A Little,
Deputy for Acting Regional Administrator.

[FR Doc. 84-33749 Filed 12-28-84; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 33, 94, 108, and 192

[CGD 84-090a]

Exposure Suits; Requirements for Mobile Offshore Drilling Units and Other Oceangoing and Coastwise Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations revise the areas where exposure suits are required for personnel on board mobile offshore drilling units, and on certain tank vessels, cargo and miscellaneous vessels, and oceanographic vessels on ocean and coastwise service. Vessels and units operating the waters where the water temperature does not present a severe threat of injury due to exposure will continue to be exempted from the requirements. The boundaries where this exemption applies were changed by recent legislation and an earlier exemption for vessels with totally enclosed lifeboats is no longer authorized. This document conforms the regulations to the statutory limitations.

DATES: These amendments become effective on December 30, 1984.

Comments will be accepted until February 28, 1985, for inclusion in a report to Congress due April 30, 1985, which will re-evaluate these regulations.

ADDRESSES: Send comments to: Commandant, C-GCMC/21 U.S. Coast Guard, 2100 2nd Street, SW., Washington, D.C. 20593.


SUPPLEMENTARY INFORMATION: A final rule was published in the Federal Register of February 7, 1984, requiring the carriage of exposure suits on board mobile offshore drilling units (MODUs) inspected under 40 CFR Subchapter I-A and certain tank vessels, cargo and miscellaneous vessels, and oceanographic vessels on ocean and coastwise service, except those operating between 35 degrees north and 35 degrees south latitude. Vessels with totally enclosed lifeboats stowed in gravity davits so that the lifeboats could be boarded in the stowed position and launched from within the boat without leaving any crew on the vessel, were exempt from the exposure suit.
requirement. Those rules became effective on August 6, 1984. Subsequently, the Congress perceived a need for more stringent requirements and passed the Coast Guard Authorization Act of 1984, which was signed by the President on October 30, 1984 (Pub. L. 98-557), which included a provision (Sec. 22) that the Secretary of Transportation, in shall, by regulation, require exposure suits on vessels that operate in the Atlantic Ocean north of 32 degrees north latitude or south of 32 degrees south latitude and in all other waters north of 35 degrees north latitude or south of 35 degrees south latitude. The Act states that the Secretary may not exclude a vessel only because that vessel carries other lifesaving equipment. The Act mandated that these regulations be effective not later than 60 days after the date of enactment. In view of these legislative requirements, these regulations are published as final rules, without benefit of notice of proposed rulemaking or public comment and are being made effective in less than 30 days after publication. However, comments are solicited for use in a report to the Congress, due within 6 months of enactment of the Act, evaluating the benefits and disadvantages of extending the regulations to require exposure suits on vessels and MODUs operating in all waters north of 31 degrees north latitude or south of 81 degrees south latitude.

Drafting Information

The principal persons involved in drafting these regulations are: LCDR William R. Riley, Office of Merchant Marine Safety; and Mr. Michael N. Mervin, Office of the Chief Counsel.

Discussion of Rules

These rules require certain MODUs and certain tank vessels, cargo and miscellaneous vessels and oceanographic vessels on ocean and coastwise service to carry exposure suits for all persons on board. These rules apply to any MODU that is inspected under 46 CFR Subchapter I-A, and vessels inspected under 46 CFR Subchapters D, I, and U. These rules are similar to those for exposure suits on MODUs that are not inspected under 46 CFR Subchapter I-A, primarily foreign flag MODUs operating on the Outer Continental Shelf of the United States. Those rules are published under a separate document which appears elsewhere in this issue of the Federal Register.

Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant under “Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations” (44 FR 11034, February 28, 1979). A final evaluation has been prepared and placed in the docket and may be inspected or copied at the Office of the Marine Safety Council, U.S. Coast Guard Headquarters, 2103 Second Street SW, Washington, DC 20593. These regulations are considered to be exempt from the procedures prescribed in Executive Order 12291 because consideration under the terms of that Order would conflict with the deadline imposed by the statute. This fact has been reported to the Director of OMB. These rules are expected to affect less than 26 inspected vessels and MODUs, since most vessels operating between 32 and 35 degrees latitude also operate north of 35 degrees north latitude or south of 35 degrees south latitude and are therefore already required to have exposure suits on board. There are an estimated 20 to 20 inspected tank vessels and cargo vessels with totally enclosed lifeboats that were exempt from the exposure suit rules that became effective on August 6, 1984. These vessels will have to carry exposure suits under these rules. A detailed estimate of costs was developed for the existing rule and is contained in docket CGD 82-075a. Costs per vessel under this new rule will be similar, and total costs will be proportionally smaller because fewer vessels are involved. These costs will be imposed directly on the private sector (the operators of affected vessels and MODUs). The operators are expected to pass the costs through to the ultimate consumers of affected maritime services in the form of price increases. However, increases in individual prices will be negligible. There is no effect on Federal, State, and local governments except in their capacities as consumers of maritime services. Implementation and enforcement of these rules would be accomplished within the scope of current Coast Guard marine safety activities, so that there will not be any need for additional Federal budget commitments.

The primary benefit identified for the rules is to improve the chances of survival for persons entering cold water as the result of a vessel casualty. The Coast Guard cannot predict, with any acceptable degree of confidence, the number of lives that might be saved by these regulations.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, it is certified that this rule will not have a significant impact on a substantial number of small entities. There are no operators of MODUs or affected vessels known to be small entities. This rule contains no information collection or recordkeeping requirements.

List of Subjects

46 CFR Part 33
Cargoes, Marine safety, Tank vessels.
46 CFR Part 91
Cargo vessels, Marine safety.
46 CFR Part 103
Marine safety, Mobile offshore drilling units.
46 CFR Part 192
Marine safety, Oceanographic vessels.

In consideration of the foregoing, Title 46 of the Code of Federal Regulations is amended as set forth below.

SUBCHAPTER D—TANK VESSELS

PART 33—[AMENDED]

1. By revising the authority citation for Part 33 to read as follows:

Authority: 46 U.S.C. 3102(a), 3305; 49 CFR 1.46.
2. By revising § 33.37-1 to read as follows:

§ 33.37-1 Applicability—TB/OCL

This subpart applies to each tank vessel in ocean, coastwise, or Great Lakes service except those—
(a) Operating on routes between 32 degrees north and 32 degrees south latitude in the Atlantic Ocean, or
(b) Operating on routes between 35 degrees north and 35 degrees south latitude in all other waters.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 94—[AMENDED]

3. By revising the authority citation for Part 94 to read as follows:

Authority: 46 U.S.C. 3102(a), 3305; 49 CFR 1.46.
4. By revising § 94.41-1 to read as follows:

§ 94.41-1 Applicability.

This subpart applies to each vessel in ocean, coastwise, or Great Lakes service, except those—
(a) operating on routes between 32 degrees North and 32 degrees South latitude in the Atlantic Ocean, or
(b) operating on routes between 35 degrees North and 35 degrees South latitude in all other waters.
implement the Competition in Contracting Act of 1984 pending issuance of Government-wide and GSA regulations. The intended effect is to implement the protest provisions of the Act within the GSA.

DATES: Effective Date: December 21, 1984. 
Expiration Date: This Acquisition Letter expires June 21, 1985, unless canceled earlier or extended.

Comment Date: Comments must be submitted on or before January 30, 1985.


FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), Office of Acquisition Policy, (202) 523-4754.

SUPPLEMENTARY INFORMATION: Pursuant to 41 U.S.C. 450(h)(1), a determination has been made to waive the requirement for publication of procurement procedures for public comment before the procedure takes effect. The statutory January 15, 1984, implementation date for the protest provisions of the Competition in Contracting Act, create an urgent and compelling circumstance which makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 15, 1983, exempted agency procurement directives from Executive Order 12291. The General Services Administration certifies that this document will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. The procedure does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects In 48 CFR Ch. 5
Government procurement.

(50 U.S.C. 450(c)

In 48 CFR Chapter 5, the following Acquisition Letter is added to Appendix C at the end of the Chapter to read as follows:

December 21, 1984
GSA Acquisition Letter V-84-5
Office of GSA Acquisition Policy and Regulations
Interim Protest Procedures To Implement the Competition in Contracting Act of 1984 (CICA)

GSA Contracting Activities

1. Purpose. To provide interim instruction on protest procedures. These procedures implement the Competition in Contracting Act of 1984 (CICA) pending issuance of Government-wide and GSA regulations.

2. Background. 
a. The CICA was signed by the President on July 18, 1984. Among other changes, the Act establishes a statutory procedure for resolving protests to the Comptroller General (GAO). As an alternate forum to the Comptroller General, CICA authorizes the General Services Administration Board of Contract Appeals (GSBCA) to resolve protests relating to the procurement of administration automatic data processing equipment and services (ADP) under Section 111 of the Federal Property and Administration Services Act (40 U.S.C. 759). These provisions of the Act become effective on January 15, 1985.
b. The final regulatory coverage implementing these provisions of the Act has been delayed because of the delay in issuance of the GAO and GSBCA final rules on protests. In addition, the Department of Justice has advised that the GAO stay provisions in 31 U.S.C. 6553(c) and (d) and the GAO damages provisions in 31 U.S.C. 3554(c) regarding payment of costs of filing and pursuing a protest and preparing the bid and proposal are unconstitutional; therefore, they do not bind the executive branch.
c. Because of the problems and delays encountered in the issuance of regulatory coverage on the protest provisions of the Act, it is necessary to provide GSA contracting activities with interim instructions in order to ensure compliance with these statutory requirements. The instructions/procedures contained in paragraph 6 of this Acquisition Letter are based on what is expected to be issued in the regulations.

3. Cancellation. This Acquisition Letter supersedes the provisions in FAR 14.407-6 and 15.1003 and in GSAR 514.407-8 and 570.402.

4. Coverage. All GSA contracting activities involved in the acquisition of property or services. This Acquisition Letter does not apply to contracting activities involved in the sale or disposal of real or personal property.


6. Instructions/Procedures. Protest to the Comptroller General or the GSBCA (ADP only) under the CICA shall be processed in accordance with the following:
a. Protest Procedure.

(1) Definitions.

[a] "Interested party," means an actual or prospective offeror whose direct economic interest would be affected by the award of or failure to award a particular contract.

[b] "Protest," means a written objection by an interested party to a solicitation by an agency for offers for a proposed contract for the acquisition of supplies or services or a written objection by an interested party to a proposed award or the award of such a contract.

(2) General.

[a] Contracting officers shall consider all protests, whether submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759(b) (hereinafter cited as "ADP contracts"), the GSCBA. The protest shall be notified in writing of the final decision on the protest. (See FAR 19.302 for protests of small business status and FAR 22.608-3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)

[b] An interested party wishing to protest—

[i] Is encouraged to seek resolution within the agency (see paragraph (3) below) before filing a protest with the GAO or the GSCBA;

[ii] May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP contract with the GAO may not file a protest with the GSCBA with respect to that contract.

[iii] May protest to the GSCBA regarding an award to an ADP contract in accordance with GSCBA Rules of Procedure. An interested party who has filed a protest regarding an ADP contract with GSCBA (30 U.S.C. 759(b)) may not file a protest with the GAO with respect to that contract.

[c] Within GSA, solicitations shall instruct interested parties to deliver a copy of any GAO or GSCBA protest to the contracting officer and the appropriate Assistant General Counsel, as follows:

Office of Information Resources Management—Assistant General Counsel (LK), General Services Administration, Washington, D.C. 20405

Public Buildings Service—Assistant General Counsel (LB), General Services Administration, Washington, D.C. 20405

Office of Federal Supply and Services—Assistant General Counsel (LP), General Services Administration, Washington, D.C. 20405

Federal Property Resources Service—Assistant General Counsel (LD), General Services Administration, Washington, D.C. 20405

Staff offices—Assistant General Counsel (LG), General Services Administration, Washington, D.C. 20405

[d] The Office of General Counsel (OGC) is responsible for all contacts with the GAO and GSCBA, potential contractors, attorneys, and any other persons, concerning protests of GSA contract actions filed with the Comptroller General or GSCBA.

(3) Protests to the agency.

(a) When a protest is filed only with the agency, an award shall not be made until the matter is resolved unless the contracting officer with concurrence of the contracting director first determines that one of the following applies:

[i] The supplies or services to be contracted for are urgently required.

[ii] Delivery or performance will be unduly delayed by failure to make award promptly.

(iii) A prompt award will otherwise be advantageous to the Government.

(b) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the offerors whose offers might become eligible for award should be informed of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance in accordance with FAR 14.404-1(d) to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding with award under subparagraph (a) above.

(c) Protests received after award filed only with the agency shall be responded to by the contracting officer after reviewing the protest with assigned counsel. The contracting officer need not suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest. In this event, the contracting officer should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(4) Protests to GAO.

The Department of Justice has advised that the GAO stay provisions in 31 U.S.C. 3553 (c) and (d) and the GAO Damages provision in 31 U.S.C. 3554(c) regarding payment of the costs of pursuing a protest and preparing a bid or proposal are unconstitutional. These procedures do not bind the executive branch, nor serve as the basis for any coverage in this Acquisition Letter.

(a) A protester shall furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, no later than one day after the protest is filed with the GAO. Failure to furnish a complete copy of the protest within one day may result in dismissal of the protest by GAO.

(b) When a protest, before or after award, has been lodged with the GAO, the agency shall prepare a report. The report should include a copy of—

[i] The protest;

[ii] The offer submitted by the protesting offeror and a copy of the offer which is being considered for award or which is being protested;

[iii] The solicitation, including the specifications or portions relevant to the protest;

[iv] The abstract of offers or relevant portions;

[v] Any other documents that are relevant to the protest; and

[vi] The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) required by paragraphs (a)(ii) or (a)(iii) below. In addition, the statement shall contain: the identity of the GAO protest by B number (GAO case file number), the solicitation or contract number, the full corporate name of the protesting organization and other firms involved; and a statement indicating whether the protest was filed before or after award. If the protest has been filed after award, the statement shall contain the identity of the awardee; the date of award; the contract number; the date and time of bid opening (including a statement when the date of bid opening was extended by subsequent amendments); the total number of bidders; a complete, chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken); and any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, e.g., Tab A, Exhibit 1, etc.)
(c) Other persons, including offerors, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases, within one work day after its receipt by the contracting officer. The contracting officer shall give immediate notice of the protest to the contractor if the award has been made or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving an award if the protest is denied. These persons shall also be advised that they may submit their views and relevant information directly to the GAO with a copy to the contracting officer within a specified period of time. Normally, the time specified will be 1 week.

(d) The agency shall submit a complete report (see (a)(4)(b) above) to GAO within 25 workdays after receipt from GAO of the telephonic notice of such protest, or within 10 workdays after receipt from GAO of a determination to use the express option, unless:

(i) The GAO advises the agency that the protest has been dismissed; or

(ii) The agency advises GAO in writing that the specific circumstances of the protest require a longer period and GAO establishes a new date. Any new date shall be documented in the agency’s protest file.

(e) Because of the short time allowed by statute for responding to GAO protests, these cases must be handled on a priority basis. The appropriate Assistant General Counsel shall prepare a report, for signature of the General Counsel, responding to GAO protests. These reports are to be based upon a statement of fact and position prepared by the responsible contracting officer and appropriate Assistant General Counsel, in triplicate. When other interested parties are involved additional copies shall be requested. The statement shall be due in the Office of the Assistant General Counsel no later than 10 workdays after the date on which the contracting activity originally received the protest. This deadline may be reduced when GAO invokes the express option. When a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate Assistant General Counsel, shall promptly notify, by telephone, of the reasons for the delay and of the additional time needed. Additional time may be granted if it is determined that the specific circumstances of the protest require a longer time. A request for extension is appropriate only when: the factual or legal issues affecting the resolution of a protest are so complex that an adequate report cannot be prepared on a timely basis; the necessity of coordinating the report with other agencies, or with activities in remote or a distant location, makes it impossible to prepare an adequate report on a timely basis; or other compelling circumstances prevent the timely preparation of an adequate report. Upon request of the Assistant General Counsel the contracting officer shall confirm any oral requests for extensions in writing. The request shall be concurred in by the contracting director with a copy to the HCA. A request for an extension which will delay submission of the agency’s report to GAO beyond 25 workdays from GSA’s original receipt of the protest may only be granted by GAO. The Assistant General Counsel will notify the contracting activity as to whether the request has been granted.

(g) After submission of the statement to the Assistant General Counsel, the contracting officer or regional counsel shall advise Assistant General Counsel of all subsequent developments which may have a bearing on the case.

(h) All documents transmitted pursuant to these procedures shall be sent by the fastest means possible.

(i) To further expedite processing, when furnishing a copy of the report including relevant documents to the GAO, the Assistant General Counsel shall simultaneously furnish a copy of the report including relevant documents to the protestor and a copy of the report without relevant documents, but with a list thereof, to other interested parties who have responded to the notice in a(a)(4)(c) above. Upon request the Assistant General Counsel shall also provide to any interested party a relevant document contained in the report.

(j) Documents previously furnished or prepared by a party (e.g., the solicitation or the party’s own proposal) need not be furnished to that party.

(k) Classified or privileged information or information that would give a party a competitive advantage and other information that the Government determines under appropriate authority to withhold should be deleted from the copy of the report or relevant documents furnished to that party.

(l) The protestor and other interested parties shall be requested to furnish a copy of any comments on the report directly to the GAO as well as to the contracting officer and to the Assistant General Counsel.

(m) OGC shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC shall be responsible for promptly advising the GAO of any change in the designated officials.

(n) Protests before award.

(i) When the agency has received notice from GAO of a protest filed directly with GAO, award shall not be made until the matter is resolved, unless the HCA determines in writing that the supplies or services to be contracted for are urgently required; delivery or performance will be unduly delayed by failure to make award promptly; or a prompt award will otherwise be advantageous to the Government. A written findings and determination (F&D) shall be prepared by the contracting officer, for signature of the
HCA. The F&D must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the F&D is approved, it shall be returned to the Assistant General Counsel who will notify GAO of the agency's intended action.

(ii) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the offerors whose offers might become eligible for award shall be informed of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance in accordance with FAR 14.404-1(d) to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding with award under a(4)(i)(f) above.

(m) Protests after award. The contracting officer need not suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest. In this event, the contracting officer should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(a) Findings and notice. If the decision is to proceed with contract award, or continue contract performance under a(4)(i) or a(4)(m) above, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and other interested parties.

(b) GAO decision time. GAO will issue its recommendation on a protest within 30 working days, or within 45 calendar days under the express option, unless GAO establishes a longer period of time.

(g) Notice to GAO. The head of the contracting activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General through the OGC within 60 days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation will not be followed by the agency.

(5) Protests to GSCBA

(a) General. An interested party may protest an ADP acquisition conducted under Section 5 of the Federal Property and Administrative Services Act (40 U.S.C. 759) by filing a protest with either the GSCBA or the GAO. A protester shall furnish a copy of its complete protest to the official or location designated in the solicitation, or in the absence of such a designation to the contracting officer, no later than the day the protest is filed with GSCBA. Any request by the protester for a hearing on a suspension of procurement authority shall be in the protest.

(b) Notification Procedure. After receipt of a protest complaint the contracting officer shall notify:

(i) All firms solicited or those who have submitted offers if the protest is filed after the closing date for receipt of initial proposals and the appropriate delegating official in the Office of Information Resources Management. Notice should be furnished by appropriate electronic means in order to assure delivery to all such firms by the working day after the date of filing with the GSCBA. Contracting officers should avoid interpreting or characterizing the nature of the protest when giving such notification. The format for notification is as follows:

Name
Address
Resume

(ii) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, shall be forwarded to the agency by appropriate means to assure next day delivery.

(iii) Assigned counsel (e.g., LK, LB, LP, etc.). If the protester failed to provide the appropriate Assistant General Counsel a copy of the protest as required by the solicitation, a copy of the protest complaint, including all attachments, shall be forwarded to the appropriate Assistant General Counsel by appropriate means to assure next day delivery. Assigned counsel will work with the Assistant General Counsel Claims and Litigation Division (LC) on all protests to the GSCBA.

(iv) The Board through LC, within five working days after the date of filing with the GSCBA, that the notices described in (i) and (ii) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice should be provided.

(c) Protest File. The GSCBA procedures state that within 10 working days after the filing of a protest, or within such time as the GSCBA may allow, the agency shall file with the GSCBA and all other parties a protest file. In order to ensure timely submission, the contracting officer should begin assembly of the protest file by the second work day after receipt of the protest. The protest file shall be forwarded to LC by overnight delivery not later than the eighth working day after the protest is filed. The copies will be distributed by LC to the GSCBA, the protestor, and one copy retained by LC. If additional copies are needed, LC will advise the contracting officer accordingly. The following rules govern the assembly of protest files:

(i) Format: Protest file exhibits are true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board in camera (see (e)(iii) below) or otherwise not served on every other party.

(ii) Contents:

(A) The contracting officer's decision, if any, from which the protest is taken.

(B) The contract, if any, including amendments, specifications, plans, drawings:

(C) All correspondence between or among the parties that is relevant to the protest;

(D) Affidavits or statements of any witnesses on the matter under protest and transcripts of any testimony taken before the filing of the protest;

(E) All documents and other tangible things on which the contracting officer relied in taking the action protested, including a copy of the agency procurement request, the delegation of procurement authority, if any, and any correspondence relating thereto;

(F) The abstract of bids, if any;

(G) A copy of the solicitation, protestor's bid or proposal (submit in camera as necessary), and if bid opening has occurred and no contract
has been awarded, a copy of any bid relevant to the protest;

(H) In a protest on a negotiated procurement when no award has been made, a copy of any offer or proposal being considered for award and which is relevant to the protest [ordinarily, these documents will be submitted in camera]; and

(i) Any additional existing evidence or information deemed necessary to determine the merits of the protest.

(ii) Confidential, Privileged or Proprietary Information: The protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary or privileged. When such information is required to be included in the protest file, it is to be placed only in the copies going to the Board to LC. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the name and identity of the offerors whose proposals are included in the copies of the protest file going to LC and the GSBCA and should include an identifying statement, e.g., "proposals being considered for award."

(d) Protest Conference. Within 6 working days of the filing of a protest a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or trial is desired and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(e) Agency Answer to Protest: The GSBCA procedures state that within 15 work days after the filing of the protest, the agency shall submit its answer to the Board setting forth its defenses to the protest and its findings, actions, and recommendations in the matter. In order to comply with this requirement, the contracting officer, assigned trial counsel (LC), and others with relevant information will meet within 3 work days after receipt of the protest to discuss the protest and the Government’s position.

(f) Hearing on Suspension of Procurement Authority.

(i) If a protest contains a timely request for a suspension of procurement authority, a hearing will be held whenever practicable but no later than 10 calendar days after the filing of the protest. The Board shall suspend the procurement authority unless the agency establishes that absent suspension, the contract award is likely within 30 calendar days; and urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision.

(ii) Circumstances in (i) above shall be established by a DaF executed by the agency head or designee.

(iii) The Board’s decision on suspension may be oral.

(g) Hearing on Merits. A hearing on the merits, if requested, will be held within 25 work days after the filing of the protest and a GSBCA decision on the merits will be issued within 45 work days; unless the Board’s chairman determines a longer period is required.

(h) Award of Protest Costs. (i) The GSBCA may declare an appropriate interested party to be entitled to the costs of filing and pursuing the protest, including reasonable attorney’s fees; and bid and proposal preparation.

(ii) Costs awarded under (i) above shall be paid promptly by the agency out of funds available to or for the use of the acquisition of supplies or services.

(i) Appeal of GSBCA’s Decision. The GSBCA’s final decision may be appealed by the agency or by an interested party, including any intervening interested parties.

b. Solicitation provision and Contract Clause.

(1) The contracting officer shall insert the following provision in all solicitations for other than small purchases.

**Insert the number of the block on the Standards Form 33 or 1442. etc., where the address of the contracting office is identified.**

**Insert the appropriate form number and title, i.e., Standard Form 33 or 1442.**

**Insert the address of the General Counsel or appropriate Assistant General Counsel. (See par 6a(2)(c).)**

(2) The contracting officer shall insert the clause at FAR 52.212-13, Stop-Work Order, in solicitations and contracts for automatic data processing equipment and services (ADP).

7 Supplementary Information.

a. Contracting activities who may not be familiar with the services available from GSA Communications Centers are advised that the Standard Form 14, Telegraphic Message, is to be used when sending notices required by this Acquisition Letter to interested parties. When preparing the Standard Form 14, the text should be double spaced, be typed in upper case letters and the priority “immediate” assigned. Each address on the mailing list must contain a street address and a zip code. If available, a fax, teletype, or TWX number should also be included as the first line of each address.

b. The message should be handcarried to the on-site GSA Communications Center or faxed to an off-site center. Communications Center personnel should be advised that the message is a protest notice to assure appropriate handling. Mailgrams are guaranteed for next day delivery if received by the Communications Center by 5:00 p.m. In emergency situations, 4-hour delivery is available by requesting the Center personnel to send the notice via Public Message Service.

8 Effective Date. The procedures for resolving protests described in paragraph 6 are effective January 15, 1984. The solicitation provision and contract clause prescribed in paragraph 6 shall be included in solicitations issued after receipt of this Acquisition Letter. In addition, solicitations which have been issued, should be amended to include the provision and/or clause whenever feasible.

9 Expiration Date. This Acquisition Letter expires 6 months after issuance unless canceled earlier.

Allan W. Beres,
Assistant Administrator for Acquisition Policy.

[FR Doc. 84-33999 Filed 12-20-84; 8:45 am]
BILLING CODE 6524-01-M
Proposed Rules

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 Parts 911 and 915

[Dockets Nos. AO-267-A10 and AO-254-A9]

Limes Grown in Florida, and Avocados Grown in South Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to be held to consider proposed amendment of the marketing agreement and Marketing Order 911 (7 CFR Part 911) covering limes grown in Florida, and the marketing agreement and Marketing Order 915 (7 CFR Part 915) covering avocados grown in South Florida.

The proposed amendments would: (1) limit each handler's representation on the Florida Lime Administrative Committee and Avocado Administrative Committee to one handler member and alternate from each of the two districts within each of the production areas; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1993 to ascertain if producers favor termination of the lime and avocado marketing orders; and (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels.

DATE: The hearing will begin at 9:00 a.m., Tuesday, January 15, 1985.

ADDRESS: The hearing will be held in the auditorium at the Homestead Agricultural Center, 18710 SW. 288th Street, Homestead, Florida.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch F&V, AMS, USDA, Washington, D.C. 20250, Telephone: 202-427-5975, or William C. Knope, AMS, USDA, Florida Citrus Mutual Building, P.O. Box 9, Lakeland, Florida 33802, Telephone: 813-683-5983. Copies of this notice of hearing and the marketing orders are available from both Mr. Doyle and Mr. Knope.

SUPPLEMENTARY INFORMATION: The amendments were proposed and the hearing requested by the Florida Lime Administrative Committee and the Avocado Administrative Committee established under the marketing agreement and order programs regulating the handling of fresh Florida limes and avocados. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from this hearing.

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

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposed amendments of the marketing agreements and orders have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreements and orders; (ii) determining whether there is a need for the proposed amendments to the marketing agreements and orders; and (iii) determining whether the proposed amendments or appropriate modifications of them will tend to effectuate the declared policy of the act.

List of Subjects

7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

PART 911—LIMES GROWN IN FLORIDA

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Proposals of the Florida Lime Administrative Committee and Avocado Administrative Committee are as follows:

Proposal No. 1

Amend §§ 911.20 and 915.20 by adding a sentence at the end of paragraph (a) to read as follows:

§ 911.20 Establishment and membership.

(a) * * * No handler may be represented on the committee by more than one member and alternate from each district.

§ 915.20 Establishment and membership.

(a) * * * No handler may be represented on the committee by more than one member and alternate from each district.

Proposal No. 2

Amend §§ 911.64 and 915.64 by revising paragraph (c), adding a new paragraph (d), and redesignating current paragraph (d) as paragraph (e) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: Provided, That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the limes produced within the production area: Provided further, That such termination shall be announced by March 15 of the then current fiscal year.
(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, to ascertain whether termination of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum at such time every sixth fiscal year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 915.64 Termination.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: Provided, That such majority has, during representative period determined by the Secretary, produced more than 50 percent of the volume of the avocados, produced within the production area: Provided further, That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, to ascertain whether termination of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum at such time every sixth fiscal year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

Proposal of the Florida Lime Administrative Committee is as follows:

Amend § 911.48 by adding a proviso at the end of paragraph (a)(1) to read as follows:

§ 911.48 Issuance of regulations.

(i) Provided, That such regulation may require that times not meeting minimum size requirements established under this section be marked with an approved food dye, as a necessary and incidental safeguard to insure that such times do not enter fresh marketing channels for regulated times.

Proposal of the Florida Vegetable Division, Agricultural Marketing Service, Department of Agriculture:

To make such changes as may be necessary to make both marketing agreements and orders conform with any amendment thereto that may result from the hearing.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[MDA, Docket No. 84–48]

Schedules of Controlled Substances Proposed Placement of 3,4-Methylenedioxymethamphetamine Into Schedule I Hearing

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: This notice announces the proposal of the Drug Enforcement Administration, Justice, to add 3,4-methylenedioxymethamphetamine to Schedule I of the Controlled Substances Act (21 U.S.C. 801, et seq.).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[MDA, Docket No. 84–48]

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ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: This notice announces the proposal of the Drug Enforcement Administration, Justice, to add 3,4-methylenedioxymethamphetamine to Schedule I of the Controlled Substances Act (21 U.S.C. 801, et seq.).


Eddie F. Kimbrell,
Acting Administrator.

[FR Doc. 84–33811 Filed 12–28–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[MDA, Docket No. 84–48]

Schedules of Controlled Substances Proposed Placement of 3,4-Methylenedioxymethamphetamine Into Schedule I Hearing

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: This is notice of a hearing with respect to a proposed rulemaking which would place the substance 3,4-methylenedioxymethamphetamine in Schedule I of the schedules established by the Controlled Substances Act (21 U.S.C. 801, et seq.). Notice of the proposed rulemaking was published in the Federal Register on July 27, 1984 at 49 FR 30210.

DATES: Interested persons desiring to participate in the hearing must give written notice of such desire as set out below within thirty days after the publication of this notice in the Federal Register. The hearing will commence on Friday, February 1, 1985 at 10:00 am. at the place specified below.

ADDRESS: Notices of desire to participate in the hearing are to be sent to: Hearing Clerk, Office of the Administrative Law Judge, Drug Enforcement Administration, 1405 I Street, NW., Room 221, Washington, D.C. 20537

Hearing location: Room 1213, Drug Enforcement Administration, 1405 I St. NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: On July 27, 1984, a Notice of Proposed Rulemaking was published in the Federal Register (49 FR 30210) giving notice that the Administrator of the Drug Enforcement Administration (DEA) proposed to place the substance 3,4-methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801, et seq.). This proposed action was based on the investigations and review of information by the DAE and on the scientific and medical evaluation and recommendations of the Secretary of the Department of Health and Human Services. It was pointed out that if this scheduling action were effected by rule, MDMA would be subject to the regulatory control mechanisms and criminal sanctions established for the manufacture, distribution and possession of any Schedule I substance.

Interested persons were invited to submit comments, objections and requests for hearing on or before August 27, 1984.

Sixteen comments were received in response to the notice, seven of which requested a hearing.

These comments and requests for hearing came from a variety of physicians, counselors, instructors and others in medical or health care related professions, as well as from former subjects in experimental studies on the use and effects of MDMA.

All of the persons or entities that submitted comments and/or requests for hearing opposed the proposed placement of the substance into Schedule I. DEA was urged by many to delay this proposed action until after additional research could be completed. Most felt that preliminary usage and studies had shown MDMA to have enormous potential value as an adjunct to psychotherapy, as an analgesic and in the treatment of problems of drug addiction.

Most of the writers vigorously objected to one of DEA's stated bases for the proposed scheduling, that being the finding that MDMA has no currently accepted medical use in treatment in the United States. Some of the responding physicians and psychiatrists reported having used it in their practices with what they felt were positive results. Many disputed the Agency's concept of "currently accepted medical use."

Several stated that the highly restrictive scheduling which is contemplated would effectively end presently ongoing research and scientific experimentation. Some felt that the costs involved in obtaining an Investigational New Drug permit from the Food and Drug Administration to conduct research on a Schedule I drug would be prohibitive to any individual researcher. Another stated that it would be unrealistic to believe that any pharmaceutical company would develop the drug.

Several felt that DEA did not have sufficient information regarding the present and potential uses of this drug and urged that the proposed scheduling
action be delayed until DEA had the opportunity to consider additional studies and reports of experimentation and research.

A few of the writers questioned the finding of high abuse potential as a basis for placement into Schedule I. While mindful of the acknowledged that there is some evidence of unsupervised use of MDMA, they felt the reported instances of abuse were not sufficient in number to warrant the conclusion that it is a substance with a high potential for abuse. Others stated that a potential for abuse had not led DEA to place certain other substances into Schedule I. A few felt that there may be some common of this substance with another which is know to be abused, MDA, and that the differences between the two should be closely examined. A number of the writers were not opposed to the placement of MDMA into one of the schedules under the CSA but felt that Schedule I was not appropriate for this substance.

On November 23, 1984, the Deputy Administrator of DEA referred the matter to the Agency's Administrative Law Judge, Francis L. Young, to conduct a hearing for the purpose of receiving factual evidence and expert opinion regarding the proposed scheduling of MDMA. Judge Young was directed to report to the Administrator of DEA his findings and recommended conclusions on the appropriate scheduling action to be taken with respect to MDMA and on the question of whether a drug which has potential for abuse but no currently accepted medical use in treatment can lawfully be placed in any schedule other than Schedule I.

Accordingly, notice is hereby given that the hearing in connection with this proposed scheduling will commence on Friday, February 1, 1985 at 10:00 a.m. in Room 1213, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C., and will continue until all interested persons desiring to participate, who have given notice of such desire as prescribed below, have been heard. The hearing will be conducted pursuant to the provisions of 5 U.S.C. 559 and 557 and 21 CFR 1308.41. Every interested person desiring to participate in the hearing, including DEA Agency counsel, on behalf of the Agency staff, shall file a written notice of intention to participate, in duplicate, with the Hearing Clerk, Office of the Administrative Law Judge, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, within thirty days after the date of publication of this notice of hearing in the Federal Register. Each notice of intention to participate must be in the form prescribed in 21 CFR 1316.48. No person who has previously filed a request for hearing need now file a notice of intention to participate.

The proceedings at the first hearing session, on February 1, 1985, will be limited to a preliminary discussion to identify parties and issues and positions, and to determine procedures and set dates and locations for further proceedings.

Frances M. Mulcan, Jr., Administrator, Drug Enforcement Administration.
[FR Doc. 84-33075 Filed 12-28-84; 8:45 am]
BILLING CODE 4410-60-M

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[EE-16-79]
Tax Treatment of Cafeteria Plans (Transition Rules); Notice of Proposed Rulemaking
AGENCY: Internal Revenue Service, Treasury.
ACTION: Amendment of notice of proposed rulemaking.
SUMMARY: This document contains proposed amendments to a notice of proposed rulemaking which was published in the Federal Register on May 7, 1984 (39 FR 19321). That notice contained proposed regulations relating to the tax treatment of cafeteria plans.

This document contains proposed amendments to the notice of proposed rulemaking under section 125 of the Internal Revenue Code of 1954. On May 7, 1984, the Federal Register published proposed regulations relating to the tax treatment of cafeteria plans (39 FR 19321). The regulations in this document are being proposed in order to replace portions of those earlier proposed regulations which have been rendered obsolete by section 531(b)(5) of the Tax Reform Act of 1984 (98 Stat. 491).

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[EE-16-79]
Tax Treatment of Cafeteria Plans (Transition Rules); Notice of Proposed Rulemaking
AGENCY: Internal Revenue Service, Treasury.
ACTION: Amendment of notice of proposed rulemaking.
SUMMARY: This document contains proposed amendments to a notice of proposed rulemaking which was published in the Federal Register on May 7, 1984 (39 FR 19321). That notice contained proposed regulations relating to the tax treatment of cafeteria plans.

This document contains proposed amendments to the notice of proposed rulemaking under section 125 of the Internal Revenue Code of 1954. On May 7, 1984, the Federal Register published proposed regulations relating to the tax treatment of cafeteria plans (39 FR 19321). The regulations in this document are being proposed in order to replace portions of those earlier proposed regulations which have been rendered obsolete by section 531(b)(5) of the Tax Reform Act of 1984 (98 Stat. 491).

The proposed regulations are issued under the authority contained in section 7605 of the Internal Revenue Code of 1954 (88 Stat. 237, 26 U.S.C. 7605).

On February 10, 1984, the Internal Revenue Service issued a news release (IR-84-22) which stated that so-called "flexible spending arrangements" do not provide employees with nontaxable benefits under the Code because, under such arrangements, employees are assured of receiving the benefit of what they would have received had no covered expenses been incurred.

On May 7, 1984, proposed regulations in question and answer form were published in the Federal Register. Q & A-21 provided that the proposed regulations were generally to be effective for cafeteria plan years beginning after December 31, 1978.

However, as to particular rules in the proposed regulations, a cafeteria plan could be amended by September 4, 1984, to meet those particular rules and thus the requirements of the proposed regulations. In addition, as to benefits provided under a flexible spending arrangement which was part of a cafeteria plan, if such arrangement met specified conditions, the benefits (funded by employer contributions made before June 1, 1934) qualified for the statutory exclusion notwithstanding that a cash-out of unused contributions was available at the end of the plan year.

General Rules
The Tax Reform Act of 1984 renders Q&A-21 obsolete and provides both general and special transition relief from certain of the rules in the proposed regulations for certain cafeteria plans and flexible spending arrangements. First, as to plans and arrangements which were in existence on or before February 10, 1984 (or for which substantial implementation costs had been incurred before such date) and which failed on or before such date and
continued to fail thereafter to satisfy the proposed regulations, general transition relief is provided until January 1, 1985; provided that the plans or arrangements are not modified after February 10, 1984, to allow additional benefits.

Section 7805(b) Relief For Amended and Suspended Plans and Benefits

Section 531(b)(5)(A) of the Tax Reform Act grants general transition relief only to cafeteria plans and benefits (including benefits that are provided through flexible spending arrangements) that failed on or before February 10, 1984, and “continued to fail thereafter” to satisfy the rules in the proposed regulations. In addition, general transition relief is available only until the effective date, after February 10, 1984, “of any modification to provide additional benefits.”

A plan or benefit that has been modified (by amendment or otherwise) after February 10, 1984, so that the plan or benefit no longer continues to fail one or more of the rules of the proposed regulations (a “conforming modification”) does not “continue to fail thereafter” and therefore does not meet the requirement of the statute for continued general transition relief with respect to the rules or rules in question. For example, if contributions or reimbursements (or both) under a flexible spending arrangement have been suspended, the benefit provided through the flexible spending arrangement does not satisfy the statute for continued relief. Furthermore, a modification to restore a plan or benefit to its condition before a conforming modification (e.g., a reactivation of contributions or reimbursements or both under a suspended flexible spending arrangement) would be a “modification to provide additional benefits.” Therefore, as to a plan or benefit which, after February 10, 1984, was modified so that it no longer failed to satisfy one or more of the rules in the proposed regulations, general transition relief is available only until the effective date of the modification but not thereafter with respect to the rule or rules in question. These statutory requirements are reflected in Q&A-25.

The Internal Revenue Service has determined, however, that participants in plans or benefits that were modified, after February 10, 1984, so that they no longer fail to satisfy one or more of the rules in the proposed regulations should not be disadvantaged because of such conforming modifications. In order to limit any adverse effect upon those participants, the Internal Revenue Service has determined to grant such plans and benefits relief under section 7805(b) of the Internal Revenue Code (See Q&A-26). Accordingly, the rules delineated in Q&A-27 generally do not become effective with respect to such plans or benefits until January 1, 1985.

Pursuant to the grant of section 7805(b) relief, a plan or benefit that has been modified, after February 10, 1984, so that it no longer fails to satisfy one or more of the rules of the proposed regulations may be further modified and continue in operation until December 31, 1984, but only under the same terms that applied immediately before the conforming modification. However, because such modified plans or benefits do not qualify for general transition relief through December 31, 1984, special transition relief is not available to such plans or benefits.

In addition, pursuant to the grant of section 7805(b) relief, certain relief is available, as set forth in Q&A-29, for cafeteria plans or benefits that were eligible for transition relief under the regulations proposed on May 7, 1984, but are not eligible for general transition relief under Q&A-25.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that this Regulation is not subject to review under Executive Order 12291 or the Treasury and Office of Management and Budget implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, 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 Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon 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.

Drafting Information

The principal author of these proposed regulations is Harry Beker of the Employee Plans and Exempt Organizations 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, both on matters of substance and style.

List of Subjects in 28 CFR 1.61-1-1.231-4

Income taxes, Taxable Income.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Q&A-21 of proposed § 1.125-1 as published in the Federal Register on May 1, 1984 (59 FR 13520-13529) is removed.

Par. 2. New Qs & As of proposed § 1.125-1 are added to read as follows:

§ 1.125-1 Questions and Answers Relating to Cafeteria Plans

Q-21: What are the general effective dates of the rules in Q&A-1 through Q&A-20? The rules in Q&A-1 through Q&A-20 relating to section 125 generally apply to plan years of cafeteria plans beginning after December 31, 1976.

The rules in Q&A-17 governing the taxability of coverage and benefits received under an accident or health plan relate specifically to sections 105 and 106 and thus generally are effective with respect to all taxable years beginning after December 31, 1953. The rules in Q&A-18 governing the taxability of coverage and benefits received under a dependent care assistance program relate specifically to section 105 and thus generally are effective with respect to all taxable years beginning after December 31, 1976. The rules in Q&A-18 governing the taxability of coverage and benefits received under a qualified
benefits provided under cafeteria plans
available for cafeteria plans or benefits
with respect to certain
which provide delayed effective dates
under the regulations proposed on May
7, 1984, but are not eligible for general
transition relief under Q&A-25.

Q-22: Which cafeteria plans and
benefits provided under cafeteria plans
are eligible for the general and special
transition relief?

A-22: There are two transition rules
providing delayed effective dates with
respect to certain of the rules in Q&A-1
through Q&A-20. First, general
transition relief, as described in Q&A-25
and Q&A-27, is provided to cafeteria
plans that were in existence on or before February 10, 1984, and to benefits
(including benefits that are provided
through flexible spending arrangements)
in existence on or before such day.
Second, special transition relief, as
described in Q&A-28, is provided to
certain benefits (including benefits that
are provided through flexible spending
arrangements) that (i) were in existence
on or before February 10, 1984, and (ii)
qualify for general transition relief
during December 31, 1984. See Q&A-23
and Q&A-24 for the rules for
determining whether a cafeteria plan for
a benefit was in existence on or before

Flexible spending arrangements are
used to pay benefits, such as medical,
legal, or dependent care assistance, that
are intended to qualify as nontaxable under the applicable rules of the Code.
Generally, under the flexible spending
arrangement form of a benefit, a
participant is assured of receiving, in
salary, cash or some other form,
amounts that are available for expense
reimbursement during the period of
coverage without regard to whether the
participant incurs covered expenses
during the period.

Plans or arrangements that are not
cafeteria plans because of a failure to
satisfy one or more of the rules specified
in Q&A-27 will be treated as cafeteria
plans solely for purposes of the
transition relief set forth in Q&A-21
through Q&A-29. For example, a plan
providing only a medical benefit through
a flexible spending arrangement will be
treated as a cafeteria plan for purposes
of the transition relief only. Also, a plan
under which a participant may elect
among two or more benefits, each of
which would be nontaxable but for the
failure of one of the benefits to satisfy
certain of the requirements in Q&A-17
or Q&A-18, will be treated as a cafeteria
plan to determine eligibility for
transition relief under Q&A-21 through
Q&A-29.

Q-23: What rules apply to determine
whether a cafeteria plan or a benefit
was in existence on or before February
10, 1984?

A-23: A cafeteria plan will be treated as
in existence on or before February 10,
1984, if on or before such day (i) the plan
was reduced to writing and
communicated to employees in written
form and (ii) amounts were contributed
with respect to benefits provided under
the plan.

A cafeteria plan will be treated as
having been reduced to writing if the
available benefits and the operation of
such plan have been fully described in
written form (e.g., by summary plan
description or plan brochure), even
though a formal plan document may not
have been written. Amounts will be
treated as having been contributed with
respect to benefits provided under the
plan if the employer made contributions
(including contributions pursuant to
salary reduction agreements) to
purchase or provide benefits elected
under the plan.

A cafeteria plan that was not actually
in existence on or before February 10,
1984, nevertheless will be treated as
in existence on or before such day if the
employer incurred "substantial
implementation costs" with respect to
that particular plan. See Q&A-24 for the
discussion of the rules applicable to the
"substantial implementation cost"
determination.

A benefit will be treated as in
existence on or before February 10, 1984,
only if on or before such day (i) the
benefit was part of a cafeteria plan that
was in existence on or before February
10, 1984, (ii) the benefit was fully
described in written form and
communicated to employees in such
form (e.g., as part of the summary plan
description or plan brochure), and (iii)
amounts were contributed with respect
to the benefit under the plan. A benefit
that was not actually in existence on or
before February 10, 1984, is not eligible
for general transition relief.

Q-24: What rules apply in determining
whether an employer has incurred
"substantial implementation costs" with
respect to a particular plan?

A-24: A cafeteria plan that was not
actually in existence on or before
February 10, 1984, will be treated as
in existence on or before such day only if
the employer incurred "substantial
implementation costs" with respect to
that particular plan. An employer will
be treated as having incurred
"substantial implementation costs" with
respect to a particular plan only if,
before February 10, 1984, it incurred
either more than $15,000 of
implementation costs for that plan or
more than one-half of the total costs of
implementing that plan.

In determining when an
implementation cost has been incurred,
the time of the performance of the
services or production of the product
giving rise to the cost, rather than the
formal billing or payment of the cost,
shall control. Thus, if before February
10, 1984, an employer has paid for
services or a product that have not been
performed or produced before such day,
such cost will not be treated as having
been incurred before such day.

Only the costs of designing and
installing computer programs and
manual accounting systems for the
operation of the plan and the costs of
printing brochures, descriptions, and
election forms for the plan are eligible
for treatment as substantial
implementation costs. Other costs
items (e.g., amounts expended for fees or
salaries for feasibility and legal opinions
and for designing the plan) are not
implementation costs for these purposes.

In order for costs to be treated as
implementation costs with respect to a
particular cafeteria plan, the costs must
be specifically allocable to such plan.
As a result, before February 10, 1984, an
employer must have intended to
establish the particular plan, and the
costs in question must be directly
related to that plan. An employer's
intent to establish a cafeteria plan will be
evidenced only if the design
specifications for the plan have been
developed and agreed upon by February
10, 1984. In addition, costs will not be
specifically allocable to a plan if the
costs would have been incurred by the
employer without regard to whether
the plan in question was established. For
example, the cost of designing and
installing a computer program will be
treated as an implementation cost with
respect to a particular plan only if such
program was specifically designed and
installed for that plan as evidenced by
plan design specifications developed by
February 10, 1984. However, an
employer that incurred implementation
costs with respect to a particular
cafeteria plan may not treat such costs
as implementation costs with respect to
another plan that had not actually been
designed when such costs were
incurred.

However, if an employer incurred
costs with respect to two cafeteria
plans, both of which had been specifically designed and agreed-upon (but not installed) as of the time such costs were incurred, and these costs are not specifically allocable between the plans, the costs are to be allocated on the basis of the number of participants in the two plans. For example, by February 10, 1984, an employer incurred $10,000 for the design of computer programs for administration of two cafeteria plans—Plan A and Plan B—each of which had been specifically designed as of such day. Because Plan A will cover 25 percent of the employer's workforce and Plan B will cover 75 percent of the workforce, $2,500 of the $10,000 is allocable to Plan A and $7,500 is allocable to Plan B.

Q-25: What relief is provided under the general transition rule?

A-25: In the case of a cafeteria plan or a benefit in a cafeteria plan that qualifies for general transition relief, the general effective dates in Q&A-21 do not apply with respect to the rules specified in Q&A-27. In lieu of the otherwise applicable general effective date, the effective date with respect to the application of a particular rule to a cafeteria plan or a benefit in a cafeteria plan under the general transition rule is the earliest of the following dates: (i) January 1, 1985, (ii) the effective date, after February 10, 1984, of a modification to the particular plan or benefit in question to provide an additional benefit, (iii) the effective date of the termination elimination of the particular plan or benefit in question, and (iv) the effective date, after February 10, 1984, of a modification to the particular plan or benefit in question that causes such plan or benefit no longer to fail to satisfy the particular rule in question ("conforming modification").

Modification To Provide Additional Benefits

The addition of a new benefit to a cafeteria plan will not be treated as a modification to provide an additional benefit if, as of February 10, 1984, it was the employer's intent, as evidenced in writing and communicated to employees, that the benefit become effective under the plan as of the particular date of addition. For example, if by February 10, 1984, an employer had announced to employees, in writing, that a new medical benefit would become available to participants on November 1, 1984, the addition of the medical benefit on such day will not be treated as a modification to provide additional benefits. However, if the new medical benefit was not actually in existence on February 10, 1984, general transition relief would not be available with respect to the new benefit.

If, after February 10, 1984, an employer modifies a flexible spending arrangement under a cafeteria plan to provide employees with additional rights, such modification would be a modification to such benefit to provide an additional benefit. Examples of additional rights are the right to make additional contributions, make more frequent changes in the amount of their contributions, receive reimbursements for expenses for which reimbursements previously had not been available, receive taxable cash under the arrangement more frequently than had been permitted, and receive new or different treatment of amounts that were available but unused for expense reimbursements (e.g., a cash-out in lieu of or in addition to a carryover). Similarly, if either contributions or reimbursements (or both) with respect to a benefit provided through a flexible spending arrangement were suspended, reactivating contributions or reimbursements (even under the same terms that applied immediately before the suspension) will be treated as a modification to provide additional benefits.

A modification that permits a plan or benefit to conform to the general and special transition rules will not be treated as a modification to provide additional benefits. For example, an extension, from December 15, 1984, until January 15, 1985, of the cut off date by which expense reimbursement claims must be submitted under a flexible spending arrangement for expenses incurred during the period ending on December 31, 1984, will not be a modification to provide an additional benefit. Similarly, an alteration to a flexible spending arrangement so that a period of coverage scheduled to end on February 28, 1985, will end on December 31, 1984, and a new period will run from January 1, 1985, through June 30, 1985, will not be a modification to provide an additional benefit.

A modification, after February 10, 1984, to a plan or benefit that causes the plan or benefit to fail one or more of the rules in the regulations generally will be treated as the provision of an additional benefit. For example, if a medical benefit, which satisfies the applicable rules in sections 105 and 106 and in these regulations, is converted, on May 15, 1984, into a flexible spending arrangement, such conversion will be a modification to provide an additional benefit.

A modification, after February 10, 1984, to permit participation by employees who would not otherwise have become eligible to participate in the plan will be treated as a modification to provide an additional benefit. However, the addition of individuals who first become eligible to participate in a cafeteria plan under the eligibility and participation rules in effect on February 10, 1984, will not be treated as a modification to provide an additional benefit.

Terminations

A benefit will be treated as terminated if the plan is amended to eliminate the benefit and the amendment has taken effect. The rules delineated in Q&A-27 will become effective with respect to the benefit that has been terminated on the effective date of the termination. However, a benefit provided through a flexible spending arrangement will be treated as suspended, rather than terminated, if (i) the employer communicated to employees that either contributions or reimbursements (or both) with respect to the arrangement were being suspended, but might be permitted in the future, and (ii) amounts under the arrangement were not made available to employees during the period of suspension for reasons other than the reimbursement of covered expenses, unless such amounts were otherwise available under the terms of the arrangement in effect immediately before the suspension.

Conforming Modifications

A modification (by amendment or otherwise) that becomes effective after February 10, 1984, and causes a cafeteria plan or a benefit (including a benefit provided through a flexible spending arrangement) no longer to fail to satisfy one or more of the rules in the Q&A-1 through Q&A-20 will be treated as a "conforming modification" that cuts off general transition relief for the particular rule or rules in question; such rule or rules will become effective with respect to the particular plan or benefit on the effective date of the conforming modification. However, notwithstanding that a conforming modification has been made with respect to one or more of the rules in Q&A-1 through Q&A-20, general transition relief remains available to that particular plan or benefit with respect to the rule or rules which have not been so modified. Conforming modifications include both amendments that bring a plan or benefit into conformity with one or more of the rules in Q&A-1 through Q&A-20, and suspensions of contributions or reimbursements (or both) with respect to
benefits provided through flexible
spending arrangements.

But see Q&A-28 for certain additional
relief that is provided to plans or
benefits with respect to which
conforming modifications have been
made.

Q-28: What additional relief is
available to cafeteria plans or benefits
with respect to which conforming
modifications have been made?

A-28: In the case of a plan or benefit
that has been modified, after February 10,
1984, so that it no longer fails to
satisfy one or more of the rules in the
proposed regulations, general transition
relief with respect to the rule or rules in
question is available only until the
effective date of such conforming
modification but not thereafter (although
general transition relief remains
available with respect to the rule or
rules not so modified). However,
pursuant to the authority contained in
section 7605(b) of the Internal Revenue
Code, the particular rule or rules in
question, if delineated in Q&A-27, shall
not become effective with respect to
such plan or benefit until January 1,
1985.

Such a plan or benefit may therefore
be further modified and continue in
operation through December 31, 1984,
but only under the same terms that
applied immediately before the
conforming modification. For example,
assume that, effective April 1, 1984, a
flexible spending arrangement was
modified by plan amendment to provide
that amounts available for medical
reimbursement would no longer be
available to the employee without
regard to whether the employee incurred
medical care during the period of
coverage. Assuming that such
amendment is a conforming
modification, the flexible spending
arrangement may be further modified to
continue in operation through December 31,
1984, under the same terms that
applied immediately before the
conforming modification.

Because such a modified plan or
benefit does not qualify for general
transition relief and is permitted to
operate through December 31, 1984, only
through a grant of section 7605(b) relief,
special transition relief as set forth in
Q&A-28 is not available to such plan or
benefit.

Q-27: Which of the rules in Q&A-1
through Q&A-20 are subject to the
general transition rule?

A-27: Relief under the general transition
rule is provided with respect to both the
cafeteria plan rules and with respect to
the rules governing the taxability of
benefits.

Cafeteria Plan Rules

The following cafeteria plan rules are
subject to general transition relief: (i) the
rules requiring that specific information
be included in the written cafeteria plan
document (Q&A-3); (ii) the rules
governing the active participation of a
participant’s spouse in a cafeteria plan
(Q&A-4); (iii) the rules governing the
information that must be included in
written plan document with respect to
salary reduction (Q&A-9) (but the
availability of salary reduction must
have nevertheless been fully described
in written form and communicated to
employees in such form); (iv) the rules
precluding a plan from operating in a
manner that enables participants to defer
the receipt of compensation, such as
by permitting the carryover of unused
benefits from one plan year to another
plan year (Q&A-7); (v) the rules
limiting the revocability of benefit
elections (Q&A-6); and (vi) as described in
the following paragraph, the rules governing
the scope of the section 125 exception to
the generally applicable constructive
receipt rules (Q&A-9, Q&A-14, and
Q&A-15).

Generally, the general transition rule
does not alter the scope of the section
125 exception to the general constructive
receipt rules. Thus, an employee will be
taxable on taxable benefits, salary or
other compensation that he has actually
received or that has become currently
available (as described in Q&A-14 and
without regard to these general
transition rules), even though the
employee currently or subsequently
elects not to receive and actually does
not receive such taxable benefits. For
example, an employee in a flexible
spending arrangement under which
otherwise taxable compensation
actually received is characterized as a
non-taxable expense reimbursement will
be taxable on such recharacterized
amount. However, for purposes of
general transition relief, the section 125
exception will provide that (i) an
employee will not be treated as having
constructively received a taxable
benefit (including cash) under a
cafeteria plan merely because the
employee participates in the election of a
particular benefit with respect to a
future period and instead receive the
taxable benefit for such period, and (ii)
an employee will not be treated as
having constructively received amounts
that have been set aside subject to a
fixed distribution or withdrawal right
under an arrangement.

The cafeteria plan rules not
modified in the preceding paragraphs
are effective with respect to a plan or
benefit as determined under the general
effective date rules in Q&A-21.

Notwithstanding the application of
the effective dates under the general
transition rule, a plan may permit an
employee to carry over unused amounts
from a period of coverage or a plan year
ending December 31, 1984, to a period of
coverage or plan year beginning on
January 1, 1985, without failing the rule
precluding a cafeteria plan from
operating in a manner to permit
participants to defer the receipt of
compensation.

Rules Governing the Taxability of
Benefits

The following rules governing the
taxability of a benefit are subject to the
general transition relief: (i) in order to
qualify for the section 105(b) exclusion
from gross income, medical expense
reimbursements must be provided under
a medical benefit that exhibits the
risk-shifting and risk-distribution
characteristics of insurance (Q&A-17);
(ii) in order to qualify for the section
105(b), 129, or 129 exclusion from gross
income, the medical, dependent care, or
legal expense reimbursements must be
provided under a benefit with respect to
which the participant is not entitled to
receive, in the form of cash or some
other benefit, the amounts available for
reimbursement irrespective of whether
the participant incurs covered expenses
during the period of coverage (Q&A-17
and Q&A-18); (iii) in order to qualify for
the section 105(b), 123, or 129 exclusion
from gross income, the medical,
dependent care, or legal expense
reimbursements must be for medical care,
dependent care, or legal care incurred
during the period for which the
participant is actually covered by the
benefit (Q&A-17 and Q&A-18); (iv)
medical care, dependent care, and legal
care are treated as having been incurred
when the participant is provided with
the care that gives rise to the covered
expenses, rather than when the
participant is formally billed, charged
for, or pays for the care (Q&A-17 and
Q&A-18); and (v) in order for medical,
dependent care, or legal expense
reimbursements to qualify for the
section 105(b), 123, or 129 exclusion
from gross income, the cafeteria plan
does not operate in a manner that enables
participants to purchase coverage under
the benefit only for periods during which
the participants expect to incur covered
expenses (Q&A-17 and Q&A-18).

Notwithstanding the application of
the effective dates under the general
transition rule, a plan may permit an
employee to carry over or receive, after
December 31, 1984, a cash-out of
amounts available but unused under a flexible spending arrangement as of December 31, 1984. Similarly, expense reimbursements under a flexible spending arrangement may be made after December 31, 1984, if such reimbursements relate to expenses incurred and contributions made on or before December 31, 1984. Finally, a plan will not be treated as operating to permit participants to elect coverage only for periods in which the participants expect to incur covered expenses merely because the period of coverage with respect to a flexible spending arrangement is terminated on December 31, 1984.

Q-28: What relief is provided under the special transition rule?

A-28: Except as provided below, for purposes of the application of the rules set forth in the following paragraph to a benefit in a cafeteria plan (including a benefit that is provided through a flexible spending arrangement) that qualifies for the general transition rule through December 31, 1984, the otherwise applicable effective dates under the general transition rule, set forth in Q&A-25, will be applied by substituting July 1, 1985, in lieu of January 1, 1985.

The special transition rule applies with respect to the following rules: (i) in order to qualify for the section 105(b) exclusion from gross income, medical expense reimbursements must be provided under a medical benefit that exhibits the risk-shifting and risk-distribution characteristics of insurance (Q&A-17), and (ii) in order to qualify for the section 105(b), 120, or 129 exclusion from gross income, dependent care, or legal expense reimbursements must be provided under a benefit with respect to which a participant is entitled to receive, in the form of cash or some other benefit, amounts available for reimbursement without regard to whether the participant incurs covered expenses during the period of coverage (Q&A-17 and Q&A-18). For purposes of the special transition rule, a period of coverage from January 1, 1985, through June 30, 1985, will satisfy the rules, in Q&A-17 and Q&A-18, precluding a cafeteria plan from operating to permit participants to purchase coverage only for periods during which the participants expect to incur covered expenses.

Notwithstanding the foregoing paragraphs, the otherwise applicable effective date set forth in Q&A-25 will not be modified by substituting July 1, 1985, in lieu of January 1, 1985, unless the particular benefit in question satisfies the following conditions: (i) the amount or specific rate of employer contributions (including salary reduction contributions) to be made with respect to the benefit is fixed prior to January 1, 1985 (or, if later, prior to the date on which the individual first becomes eligible to participate under the benefit); (ii) the employer contributions are deposited or credited to an account (including an entry on the employer’s books) established on behalf of the participant by the employer before being made available for expense reimbursement; (iii) neither the participant nor the employer have the right to increase or decrease contributions to the account during the period between January 1, 1985 (or, if later, the date on which the individual first becomes eligible to participate under the benefit), and July 1, 1985 (but contributions may be terminated during this period on account of the participant’s separation from the service of the employer, and contributions may be terminated or increased or decreased on an account of and consistent with certain changes in family status, as set forth in Q&A-8, or with a change in employment status from full-time to part-time or from part-time to full-time); and (iv) distributions are not available with respect to contributions made after December 31, 1984, for reasons other than the reimbursement of covered expenses before the earlier of July 1, 1985, or the participant’s separation from the service of the employer.

Amounts available but unused, as of June 30, 1985, for reimbursement under a benefit in a cafeteria plan qualifying for special transition relief may be (i) used to reimburse covered expenses incurred before July 1, 1985, (ii) distributed in cash to participants, (iii) used to provide the participants with any other taxable or nontaxable benefit (e.g., contribution to a qualified profit-sharing plan), or (iv) made available for the reimbursement of covered expenses incurred after June 30, 1985. If amounts unused as of June 30, 1985, remain available for the reimbursement of expenses incurred before July 1, 1985, and are not made available for the reimbursement of covered expenses incurred after June 30, 1985, the plan was amended to operate in accordance with these rules: (i) the rules requiring certain information to be included in the cafeteria plan document (Q&A-3), (ii) the rules governing the active participation of a participant’s spouse in a cafeteria plan (Q&A-4), (iii) only in the case of a plan under which participants were permitted neither to carry over unused benefits for more than one plan year nor to convert, into any other benefits, any unused benefits that had been carried over to a subsequent plan year, the rules prohibiting the carryover of any unused contribution or benefit from one plan year to a subsequent plan year (Q&A-7), and (iv) the rules limiting the revocability of benefit elections (Q&A-8). A cafeteria plan may treat the portion of its current plan year remaining after September 4, 1984, as a new period of coverage for purposes of satisfying the rules governing benefits elections (Q&A-8). Also, a benefit offering participants the opportunity to make elective contributions under a qualified cash or deferred arrangement may be included in a cafeteria plan only in plan years beginning after December 31, 1980.

Rules Governing the Taxability of Benefits

If the coverage under an accident or health plan, dependent care assistance
program, or qualified group legal services plan was offered as a benefit under a cafeteria plan and such benefit failed to satisfy, on or before May 7, 1984, the rule prohibiting a plan from operating to enable a participant to elect coverage under an accident or health plan, a dependent care assistance program, or a qualified group legal services plan only for periods during which the participant expects to receive medical care, dependent care, or legal services (Q&A-17 and Q&A-18), such benefit will not be deemed solely on account of such failure to have failed to satisfy the statutory rules providing for the income exclusion of such coverage or of any benefits provided thereunder. If, by September 4, 1984, the cafeteria plan was amended to operate in accordance with such election of coverage rule. A cafeteria plan may treat the portion of its current plan year remaining after September 4, 1984, as a new period of coverage and as an initial plan year for purposes of satisfying the rule prohibiting a plan from operating to enable participants to elect coverage under an accident or health plan, dependent care assistance program, or qualified group legal services plan only for periods during which they expect to receive medical care, dependent care, or legal services (Q&A-17 and Q&A-18). In addition, if the conditions set forth below are satisfied, employer contributions (including elective and nonelective contributions) made before June 1, 1984, under an arrangement described in the next sentence which is part of a cafeteria plan, will not be treated as having been made to an accident or health plan, dependent care assistance program, or qualified group legal services plan only for periods during which they expect to receive medical care, dependent care, or legal services (Q&A-17 and Q&A-18).

(iv) Contributions were actually deposited in or credited to the account before being made available for reimbursement and

(v) Distributions were not available for reasons other than reimbursement of covered expenses until the end of the plan year or until December 31, 1984, whichever is earlier (but a plan may provide that a single distribution of the unreimbursed balance may be made on account of the participant's (a) separation from service or (b) cessation of participation under the arrangement for the remainder of the plan year).

A cafeteria plan may operate on a plan year other than the calendar year for purposes of this transitional rule, so long as the terms of the plan permit contributions to a plan to be fixed only once during, and a distribution of the unreimbursed amount to be received only once for the period beginning with the plan year and ending no later than December 31, 1984, provided that contributions may be fixed for a short plan year of the plan's first period of operation. This transitional rule does not affect or alter the requirement of Q&A-17 and -18 that expenses that are reimbursed under an arrangement must have been incurred during the period for which the participant actually is covered by the arrangement.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax regulations relating to the withholding that is required upon the disposition of a U.S. real property interest by a foreign person. In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed before March 4, 1985. These rules would apply to dispositions of U.S. real property interests after December 31, 1984, and are proposed to be effective after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CCR/RT (LR-151-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Robert E. Culbertson, Jr., of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CCR/RT (LR-151-84); 202-560-3289.

SUPPLEMENTARY INFORMATION: The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new §§ 1.1445-1T through 1.1445-7T to 26 CFR Part 1. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1 by adding §§ 1.1445-1 through 1.1445-7 to the regulations under section 1445 of the Internal Revenue Code of 1984. For the text of the temporary regulations, see FR Doc. 84-33769 (T.D. 6909) published in the Rules and Regulations portion of this issue of the Federal Register.

Regulatory Flexibility Act and Executive Order 12291

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 a proposed rulemaking which solicits public comment, 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

26 CFR Part 1 (LR-151-84)

Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service, Treasury.
apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

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 3506(b) of the Paperwork Reduction Act. Comments on these collection of information requirements may 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.

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.

Drafting Information

The principal author of this regulation is Robert E. Culbertson, Jr., of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.661-1 and 1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, source of income, United States investments abroad.

Proposal of Regulations

1. The temporary regulations, FR Doc. 84-33789 [T.D. 6000] published in the Rules and Regulations portion of this issue of the Federal Register, are hereby also proposed as final regulations under section 1445 of the Internal Code of 1954.

2. On September 21, 1985 (47 FR 41581), IRS published a proposed rule which cross-referenced temporary regulations in 26 CFR Part 6a in the Rules section of that issue. Sections 6a.6033C-1 through 6a.6033C-5 which were added as temporary regulations and cross-referenced under 26 CFR Part 1 have been removed by a document published in the Rules of this issue.

James L. Owens,
Acting Commissioner of Internal Revenue.

[FR Doc. 84-53785 Filed 12-26-84; 1:16 pm]
BILLING CODE 4830-01-M

26 CFR Part 1

[LR-200-84]

Deductions in Excess of $5,000 Claimed for Certain Charitable Contributions of Property and Information Reporting by Donees Who Make Certain Dispositions of Donated Property

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 income tax regulations relating to deductions in excess of $5,000 claimed for certain charitable contributions of property and information reporting by donees who make certain dispositions of donated property. The text of the temporary regulations also serve as the comment document for this notice of proposed rulemaking.

DATES: Proposed Effective date: The regulations are proposed to be effective for contributions of property made after December 31, 1984.

Dates for Comments and Requests for a Public Hearing: Written comments and request for a public hearing must be delivered or mailed by March 1, 1985.


SUPPLEMENTARY INFORMATION:

Background


For the text of the temporary regulations, see T.D. 6003 published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

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 comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 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 eight 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.

Drafting Information

The principal author of these proposed regulations is Beverly A. Baughman 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, both on matters of substance and style.

List of Subjects
28 CFR 1.61-1 Through 1.281-4
Income taxes, Taxable income, Deductions, Exemptions
26 CFR 1.6001-1 Through 1.6109-2
Income taxes, Administration and procedure, Filing requirements.


Roscoe L. Egger, Jr., Commissioner of Internal Revenue.
[FR Doc. 84-33842 Filed 12-26-84; 3:04 p.m.]

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 935
Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendments to the State’s permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Ohio regulations concerning excess spoil, and the construction of excess spoil fills.

This notice sets forth the times and locations that the Ohio program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. January 30, 1985, will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendment has been scheduled for January 25, 1985. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by January 16, 1985. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADRESSES: The public hearing is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 689-0578.

Copies of the Ohio program, the proposed modification to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Headquarters Office and the Office of the State regulatory authority office listed below, during normal working hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM’s Columbus Field Office, Office of Surface Mining, Room 6124, 1100 "L" Street, NW., Washington, D.C.

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43237; Telephone: (614) 689-0578.

SUPPLEMENTAL INFORMATION:
1. Background on the Ohio Program
The Ohio program was approved effective August 15, 1982, by notice published in the August 10, 1982 Federal Register [47 FR 34688]. The approval was conditioned on the correction of 28 minor deficiencies in 11 conditions (a), (b), (c), (d), (e), (f)(1)(i)(f)(10), (g), (h)(1)–(b)(3), (i)(1)–(i)(3), (j) and (k)(3)–(k)(5). Information pertinent to the general background, revisions, modifications and amendments to the Ohio program submission, as well as the Secretary’s findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program may be found in the August 10, 1982 Federal Register.

II. Submission of Revisions
By letter dated November 20, 1984, Ohio submitted a program amendment consisting of a revision to rule 1591:19–9-07 concerning excess spoil. The proposed amendment defines excess spoil and sets standards for the construction of excess spoil fills. The proposed amendments reflect changes made to Federal regulations at 30 CFR 610.71 et seq. during OSM’s regulatory reform effort. The proposed amendments establish requirements for foundation investigation, construction of fills in lifts of no more than four feet, a static safety factor of 1.5 feet for all fills, and engineer certification of fills.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Ohio program.

III. Procedural Matters
1. Compliance with the National Environmental Policy Act The Secretary has determined that, pursuant to section 702(d) of SHCRA, 30 U.S.C. 1229(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On August 23, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5
SUPPLEMENTARY INFORMATION: The Deficit Reduction Act of 1984 amended 38 U.S.C. 3010 concerning effective dates of disability and death pension awards. The new law provides that, if an application for disability pension is received on or after October 1, 1984, the effective date of an award of pension based on that application may be no earlier than the date of receipt of the claim unless certain conditions are satisfied.

If the veteran files a claim for a retroactive pension award within one year of the date on which he or she became permanently and totally disabled, and if it can be established that a disability was so severe as to prevent the veteran from filing an application for pension for at least the first 30 days following the date of permanent and total disability, then the pension award may be effective from the date of permanent and total disability or the date of receipt of claim, whichever is to the veteran's advantage. Since an actual physical or mental disability must be shown to have prevented the timely filing of an application, the regulatory provision for presumptive permanent and total disability at age 65 does not apply in making these retroactive determinations.

The new law also provides that if an application for death pension is received on or after October 1, 1984, the effective date of an award of pension based on that application shall be the first day of the month in which the veteran's death occurred if the claim was received within 45 days of the date of death. Otherwise, the effective date of the award may be no earlier than the date of receipt of the claim.

To implement these changes of law the VA is proposing to amend paragraphs (b) and (c) of 38 CFR 3.400 to reflect the different effective date rules for disability and death pension awards depending on the date of receipt of the application. At a future time when it can be determined that there are no pending applications for disability or death pension that could have been received prior to October 1, 1984, the effective date rules dealing with applications received prior to that date will be deleted. The VA is also proposing to amend 38 CFR 3.151 and 3.152 to provide additional guidance to claimants regarding these changes in effective date rules and to provide that a specific claim for retroactive benefits is required before entitlement to retroactivity may be considered. To provide consistency with the regulations concerning basic pension eligibility, the disability which prevented timely filing of the pension application must not have been the result of the veteran's own willful misconduct.

The Administrator has certified that these proposed regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act RFA 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons: (1) They will not have an effect on the economy of $100 million or more. (2) They will not cause a major increase in costs or prices. (3) They 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.
(b) Retroactive disability pension claims. Where disability pension entitlement is established based on a claim received by the VA on or after October 1, 1984, the pension award may be filed separately or retroactively. Claims for disability pension, but it must be received by the VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in § 3.400(b) of this chapter. (38 U.S.C. 3010(b)(3))

2. Section 3.152 is revised to read as follows:

§ 3.152 Claims for death benefits. (a) A specific claim in the form prescribed by the Administrator (or jointly with the Secretary of Health and Human Services, as prescribed by § 3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by the VA. (See § 3.400(c) concerning effective dates of awards.) (38 U.S.C. 3001(a))

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits. (38 U.S.C. 3001(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits. (38 U.S.C. 3001(b)(2))

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a surviving spouse's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 3010(e).) (See paragraph c)(3) of this section.) Where the award to the surviving spouse is terminated by reason of her or his death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a surviving spouse who does not have entitlement will not be accepted as a claim for a child or children in her or his custody named in the claim.

(3) Where a claim of a surviving spouse is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement from a child or children named in the surviving spouse's claim is submitted within 1 year from date of request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

3. Section 3.400 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 3.400 General.

(b) * * * (1) Disability pension (§ 3.303). An award of disability pension may not be effective prior to the date entitlement arose.

(i) Claims received prior to October 1, 1994. Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) Claims received on or after October 1, 1984. (A) Except as provided in paragraph (b)(1)(ii)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of § 3.342(a) do not apply.

* * * * *

(c) Death benefits—(1) Death in service (38 U.S.C. 3010(j), Pub. L. 87–823 (§§ 3.4(c), 3.5(b)). First day of the month fixed by the Secretary as the date of actual or presumed death, if claim is received with 1 year after the date the initial report of actual death or finding of presumed death was made; however, benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) Service-connected death after separation from service (38 U.S.C. 3010(d), Pub. L. 87–823 (§§ 3.4(c), 3.5(b)) First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) Nonservice-connected death after separation from service. (i) For awards based on claims received prior to October 1, 1994, first day of the month in which the veteran's death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim.

(ii) For awards based on claims received on or after October 1, 1994, first day of the month in which the veteran's death occurred if claim is received within 12 months after the date of death; otherwise, date of receipt of claim.

(iii) Child (38 U.S.C. 3010(c), Pub. L. 87–823). First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.
COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1502

National Environmental Policy Act; Incomplete or Unavailable Information

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Council on Environmental Quality is considering the need to amend the regulation entitled "Incomplete or unavailable information" (40 CFR 1502.22), in the regulations implementing the procedural provisions of the National Environmental Policy Act (40 CFR 1500 et seq.).

To assist in its review of this regulation, the Council solicits written comments from all interested parties to the specific questions listed below. All written comments received by CEQ will be made available for public review.

DATES: Comments must be received by Friday, February 1, 1985.

ADDRESS: Comments should be addressed to Dinah Bear, General Counsel; Council on Environmental Quality; 722 Jackson Place, NW; Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel; Council on Environmental Quality; (202) 395-5754.

SUPPLEMENTARY INFORMATION: On November 28, 1978, the Council on Environmental Quality (CEQ) issued regulations implementing the procedural provisions of the National Environmental Policy Act (43 FR 55978-56007). These regulations became effective on May 1, 1979, and were binding upon all federal agencies on July 30, 1979, and for all remaining federal agencies on November 30, 1979.

These regulations have not been amended since their promulgation in 1978. However, as part of its NEPA oversight responsibilities, the CEQ has published several memoranda to agencies containing guidance on agency implementation of the NEPA regulations. On August 11, 1983, CEQ published, in proposed form, one such memorandum addressing the CEQ regulation for handling "Incomplete or unavailable information" in the context of preparing an environmental impact statement (EIS) (40 FR 36486). Due to suggestions received during the public comment period, CEQ withdrew the proposed guidance, and stated that it would continue its examination of this issue with the intent to publish a new proposal in the near future. (49 FR 4803).

During such further examination of this issue, commonly known as the "worst case analysis" issue, the CEQ has received, pursuant to 5 U.S.C. 553(e), a petition to amend 40 CFR 1502.22 from the Pacific Legal Foundation, as well as numerous requests from federal agencies to initiate rulemaking regarding this regulation. CEQ has also received correspondence from persons who believe that the existing regulation is inappropriate. The current regulation reads as follows:

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decisionmaker and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

The Council has determined that prior to publishing a specific regulatory proposal, it wishes to solicit thoughtful comment in response to the following questions:

1. Under what circumstances and to what extent must a federal agency engage in forecasting or speculation when confronted with scientific uncertainty or gaps in information concerning the environmental effects of a proposed action?

2. How can an analysis be structured to present reasonable forecasting in the face of scientific uncertainty or information gaps about the effects of proposed action to provide more understandable information for decisionmakers and other interested parties?

3. Does the type of analysis called for in 40 CFR 1502.22 require federal agencies to go beyond the "rule of reason", as traditionally expressed in judicial decisions interpreting NEPA?

4. Should a threshold standard be established which would trigger the preparation of the type of analysis identified in response to question one, such as a threshold of severe consequences, a threshold of probability, or a threshold of scientific credibility?

5. Is the term "worst case" appropriate for this type of analysis? If so, how should it be defined? If not, what is the most appropriate term for this type of analysis, and how should it be defined?

A. Alan Hill, Chairman.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5475

Federal Timber Contract Payment Modification; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of public comment period on proposed rules.

SUMMARY: This notice extends the period allowed for submission of comments on the proposed rulemaking implementing the Federal Timber Contract Payment Modification Act (Pub. L. 98-478). The proposed rulemaking was published in the Federal Register on December 5, 1984 (49 FR 47213) with a public comment period of 30 days. The United States Forest Service plans to publish proposed rulemaking implementing Pub. L. 98-478 in early January. In order to allow the public sufficient time to review simultaneously the Bureau of Land Management's proposed regulations implementing Pub. L. 98-478 and the United States Forest Service's proposed regulations for implementing the Act, the period for submitting comments on the Bureau of Land Management proposed rules is hereby extended for an additional 30 days.

DATE: The comment period is extended to February 4, 1985. Comments received after this date may not be considered in
DEPARTMENT OF TRANSPORTATION
Coast Guard


[CGD 84-069]

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering proposing a complete revision of the lifesaving equipment regulations for tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, passenger vessels, nautical school ships, and oceanographic research vessels, as well as the specification regulations for approved lifesaving equipment. This advance notice of proposed rulemaking describes the major contemplated changes. The primary purpose of the project is to implement the provisions of the new Chapter III of the Safety of Life at Sea Convention which is expected to come into force 1 July 1988. Lifesaving regulations for Great Lakes vessels which are not covered by the Safety of Life at Sea Convention would also be revised to require more effective lifesaving equipment. The project would also reorganize the lifesaving regulations in order to simplify, clarify and reduce redundancy. This advance notice of proposed rulemaking provides an early opportunity for public participation in the development of the revised regulations.

DATES: Comments must be submitted on or before March 1, 1985.

ADDRESSES: 1. Comments should be mailed to the Commandant (G-CMC/21) (CCD 84-069), U.S. Coast Guard, 2100 Second St., SW. Washington, DC 20593. Between the hours of 7:00 a.m. and 4:00 p.m. Monday through Friday, except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (C-CMC/21) Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW. Washington, DC, (202) 429-1477.

FOR FURTHER INFORMATION CONTACT: Charles Frost, (202) 693-8664.


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The decisionmaking process in the 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: Charles Frost, (202) 693-8664.


[FR Doc. 84-33833 Filed 12-28-84; 8:45 am]

BILLING CODE 4110-84-M

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2. The revised Chapter III of the Safety of Life at Sea Convention is published by the International Maritime Organization (IMO) in Volume I of the “1983 Amendments to the International Convention for the Safety of Life at Sea, 1974” (IMO publication 996 83.10E). This publication is available from:

a. The International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England. Request publication 996 83.10E. The price is $2.50 or the dollar equivalent at current exchange rates. If payment is by check, it must be drawn on a United Kingdom bank. The price includes surface mail delivery. Airmail delivery is available at extra cost.


c. Southwest Instrument Co., 235 W. Seventh St., San Pedro, CA 90731, telephone (213) 519-7800. The price is $8.50 plus shipping.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Merchant Marine Safety (G-MVI-3/24), Room 2412, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 429-1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On June 17, 1983, the Maritime Safety Committee of the International Maritime Organization (IMO) approved a new Chapter III (Lifesaving Appliances and Arrangements) for the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974). The new chapter is part of the 1983 amendments to SOLAS 1974 and is expected to come into force on 1 July 1988. Ships whose keels are laid or at a similar stage of construction on or after that date must comply. In addition, some of the operational requirements apply to existing ships on that date, and some equipment requirements will become effective for existing ships on 1 July 1991. SOLAS 1974 applies to self-propelled merchant vessels on international voyages, except for cargo ships (including tankers) under 500 gross tons and fishing vessels.

The Coast Guard announced a series of meetings with the U.S. Lifesaving Manufacturers Association in the Federal Register of July 30, 1984 (CGD 84-061, 49 FR 30339). These meetings are to discuss the implications of the new SOLAS Chapter III requirements on Coast Guard approved lifeboats, inflatable liferafts, and launching equipment. The outcome of these meetings may affect the content of revised regulations for lifeboats, inflatable liferafts, and launching equipment that will be proposed under this project. The meetings are open to any interested person.

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this Notice (CGD 84-069) and the specific section to which each comment applies, and give reasons for the comments. If an acknowledgment is desired, a stamped, self-addressed postcard should be enclosed. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in drafting these regulations are: Mr. Robert Markle, Project Manager, Office of Merchant Marine Safety, and Mr. Michael Mervin, Project Counsel, Office of Chief Counsel.

General Discussion of the Planned Regulations

This project would completely revise the vessel lifesaving equipment carnage regulations in CFR Title 46 for tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, passenger vessels, nautical school ships, and oceanographic research vessels. The revised regulations would be consolidated into one new Subchapter Q which would replace most of the repetitive sections of the lifesaving equipment parts in the vessel regulations, except for requirements that apply specifically to a particular type of vessel.

The lifesaving equipment specification regulations in Parts 160 and 161 (Subchapter Q) of Title 46 would be revised to meet the new SOLAS requirements, and to comply with current regulatory drafting practices. Some changes would also be necessary to the recreational boat equipment rules
in Part 175 of Title 33 to revise the list of available visual distress signals.

Although the regulations would be completely revised in format, their content would be similar to the present regulations with the following exceptions:

1. Vessel regulations and equipment specification regulations would be revised to incorporate the changes required by the revised SOLAS Chapter III. Although the new Chapter III is much closer to U.S. regulations than the previous version, the U.S. regulations still describe more completely onboard inspection requirements, and performance and inspection requirements for approved lifesaving equipment. These existing provisions which the new SOLAS Chapter III does not cover will generally be retained, except for updating and substituting performance requirements for detail requirements where appropriate.

2. As part of the consolidation of the regulations, requirements for vessels not subject to SOLAS (primarily Great Lakes vessels, coastwise vessels, and cargo and tank vessels under 500 gross tons), would be revised to be consistent with the SOLAS requirements where appropriate.

3. Requirements for Great Lakes vessels would be revised to require such improvements as totally enclosed lifeboats and davit-launched liferafts on cargo and miscellaneous vessels, and on tankers.

4. Revisions would be included to incorporate various recommendations of Coast Guard Marine Board of Investigation and the National Transportation Safety Board. For the most part, these recommendations are consistent with revisions that will be required to comply with SOLAS Chapter III.

5. The lifesaving equipment regulations for mobile offshore drilling units (MODUs) in Subchapter I-A of Title 46 would be revised to make them consistent with the IMO MODU Code. The major change involved is the addition of a requirement for float-free liferafts for 100% of the persons on board. Subchapter I-A has no such requirement at present.

6. The MODU regulations also need to be revised to require that new MODUs (other than drillships) be built so that lifeboats are launched in a direction headed away from the unit, that the lifeboats and davit-launched liferafts clear any part of the MODU structure by 5 m (16.5 ft.) with the MODU on even keel, and that the lifeboats and davit-launched liferafts clear any part of the MODU structure at 20° adverse list.

Some of the major planned changes and issues are discussed more completely in the following paragraphs.

Planned Regulations to Meet SOLAS Chapter III

Some of the major changes which would be made to the regulations for oceangoing vessels to comply with SOLAS Chapter III are listed below (Numbers in parentheses refer to the corresponding regulation in the revised Chapter III). Persons interested in a copy of the revised Chapter III should obtain Volume I of the "1983 Amendments to the International Convention for the Safety of Life at Sea, 1974" (see ADDRESSES section).

a. General.

1. Provide for the approval of novel lifesaving systems through the application of IMO Resolution A520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-Saving Appliances and Arrangements" (4.3).

2. Add a requirement for survival craft Emergency Position Indicating Radio Beacons (EPIRBs) (6.2.2).

3. Add a requirement for the least three two-way radiotelephone apparatus for communication with survival craft (6.2.4).

4. Require sufficient lifejackets suitable for children as may be required to provide a lifejacket for each child on board (7.2.1.1).

5. Require an exposure suit for every person assigned to crew the rescue boat (7.3.1).

6. Require davit-launched survival craft muster and embarkation stations to be arranged to enable stretcher cases to be placed in survival craft (11.6).

7. Provide stowage, embarkation, launching, and recovery requirements for rescue boats (14, 16).

8. Require a lifesaving system training manual for the crew to be provided on board (16.2).

9. Require killed was used in launching to be turned end for end at intervals of not more than 30 months and be renewed when necessary or at intervals of not more than 5 years, whichever is the earlier (19.4).

b. Oceangoing passenger vessels.

1. Require "partially enclosed" or "totally enclosed" lifeboats (20.1.1).

2. Permit substitution of liferafts for lifeboats on vessels less than 85 m (279 ft.) in length other than oil tankers, chemical tankers and gas carriers (20.1.3).

3. Require all survival craft needed for abandonment to be capable of being launched within 10 min from the time the abandon ship signal is given (20.1.5).

4. Require at least one rescue boat. A lifeboat may be accepted as a rescue boat if it also complies with the requirements for a rescue boat (20.2).

5. Require lifeboats to be arranged to be boarded and launched directly from the stowed position (20.1).

6. Require at least one rescue boat, A lifeboat, if it also complies with the requirements for a rescue boat (20.2).

7. Require liferafts for 100% of the persons on board rather than the present 50% (20.1.1.2).

8. Permit the carriage of stern-launched free-fall lifeboats in lieu of conventionally-launched lifeboats (20.1.2.1).

9. Require chemical tankers and gas carriers carrying cargoes having a flashpoint not exceeding 60°C to carry fire protected lifeboats. (20.1.6).

10. Require tankers, chemical tankers and gas carriers carrying cargoes having a flashpoint not exceeding 60°C to carry fire protected lifeboats. (20.1.7).

11. Provide for approval of partially enclosed lifeboats, totally enclosed lifeboats (including free-fall type), gas-protected lifeboats, and fire-protected lifeboats (42, 44, 45, 46).

2. Revise davit and winch requirements to provide for launching at 20° list and 10° trim (15.5.1).

3. Change structural factor of safety for davits to 4.5 up to 20° list instead of 6 up to 15° list (46.1.6).

4. Require minimum lowering speed based on formula that increases lowering speed with increasing launch height (48.2.6).

Planned Changes for Great Lakes Vessels

a. Regulations for all Great Lakes cargo and miscellaneous vessels, as well as oceanographic vessels, would be revised to require:
1. A totally enclosed lifeboat on one side of the vessel large enough to accommodate all persons aboard.

2. Liferafts on the other side of the vessel with sufficient aggregate capacity to accommodate all persons on board. These rafts would be normally davit launched and would also be arranged to automatically float-free.

3. In the case of vessels with a forward pilot house, float-free liferafts in the area of the pilot house with sufficient capacity to accommodate the largest number of persons normally on duty there.

4. Gravity type lifeboat launching appliances that enable the lifeboats to be boarded at the stowed position and the launch controlled from inside the boat.

b. Regulations for all Great Lakes tank vessels would be revised to require:

1. A fire protected totally enclosed lifeboat on each side of the vessel. Each boat would be large enough to accommodate all persons on board.

2. Float-free liferafts with sufficient aggregate capacity to accommodate all on board.

3. Rafts and launching appliances as described for cargo and miscellaneous vessels.

c. Regulations for all Great Lakes passenger vessels would be revised to require:

1. A combination of totally enclosed lifeboats and davit launched liferafts sufficient to accommodate all persons on board, plus additional boats or rafts to accommodate 10% of the persons permitted on board, or the number of persons that can be accommodated in the largest single survival craft, whichever is the greater.

2. The ratio of liferafts to lifeboats shall not exceed 6:1, so that the lifeboats can marshal and tow the liferafts as necessary.

3. Lifeboat launching appliances as described for cargo and miscellaneous vessels.

d. The rules would apply as follows:

1. All new vessels started on or after the effective date.

2. All existing tank vessels, cargo and miscellaneous vessels, and oceanographic vessels, except that those with gravity lifeboat davits could adapt those davits and launching arrangements to accommodate the enclosed boats.

3. Existing passenger vessels would be required only to add float-free liferafts to bring survival craft capacity up to 110% of the persons permitted on board in any season of operation.

e. The following exceptions would be provided:

1. Vessels under 85 m (279 ft) long could substitute liferafts for the required lifeboats, provided that a suitable motor rescue boat is fitted.

2. Passenger vessels operating not more than 3 miles from land or in waters not deep enough to submerge the upper deck of the vessel would have to carry only some combination of floats, buoyant apparatus or open liferafts to accommodate all persons on board plus 10%.

Consolidation of the Lifesaving Regulations

The present lifesaving equipment regulations are spread throughout 46 CFR Chapter I. Common requirements are repeated in each vessel Subchapter, and are not completely consistent from one type of vessel to another. The regulations can therefore be considered to be overlapping and inconsistent, contrary to the present requirements of law and Administration policy. Some of the equipment requirements in 46 CFR Subchapter Q are obsolete, vague, and confusing. Complete revision is indicated.

Application of Certain Equipment Requirements to Existing Vessels

The new SOLAS Chapter III requires vessels that were started before July 1, 1986 to retrofit certain equipment by July 1, 1989. The U.S. regulations could require earlier compliance. Some of this equipment is already required on U.S. ships. The items not now required and a brief discussion of each follows:

1. Emergency Position Indicating Radio Beacons (EPIRBs) for lifeboats and liferafts—Time spent searching for survival craft could be significantly reduced if EPIRBs were available for this purpose.

2. Two-way radiotelephone apparatus for communication between the ship and its lifeboats and liferafts—Two-way radio apparatus already on board most oceangoing vessels would satisfy this requirement, and should also help in the location of survivors.

3. Additional float-free liferafts on cargo vessels and tank vessels so that total liferaft capacity is 100% of the persons on board rather than the present 50%—Float-free liferafts are provided on cargo vessels and tank vessels in case lifeboats are not available, so 100% capacity should be provided.

4. Retroreflective material on lifeboats, liferafts, rescue boats, and life buoys—Retroreflective material on life preservers has been effective in a number of rescues, and its use should be extended to other floating survival equipment.

The need for all of these items has been demonstrated in various vessel casualties. This equipment would be required on existing vessels approximately two years after publication of a final rule.

Cost of the Regulations

A full analysis of costs and benefits will be part of the rulemaking procedure. A preliminary estimate shows a one-time cost of $4,933,200 to comply with the retrofit requirements in the new SOLAS Chapter III. A recurring annual cost of $3,311,840 will result from the additional equipment required on newly constructed vessels, as well as the added maintenance costs for the new equipment.

The one-time costs arising from the changes for Great Lakes vessels are estimated to be $5,450,000, due primarily to the requirement to retrofit a totally enclosed lifeboat and davit launched liferaft on each vessel not so equipped at present. A recurring annual cost of approximately $50,000 would result from fitting the additional equipment on newly constructed Great Lakes vessels.

Total estimates for the project are $10,106,250 total one-time cost and $2,271,840 in recurring annual costs.

EPIRBs in Each Survival Craft

The Coast Guard is considering a requirement for an Emergency Position Indicating Radio beacon (EPIRB) in each survival craft, instead of one EPIRB on each side of the vessel stowed so that it can be readily carried to any survival craft, as in the revised SOLAS Chapter III. The Federal Communications Commission has already proposed rules that would provide for the type acceptance of these Class S EPIRBs (49 FR 31736, August 8, 1984).

The SOLAS arrangement would require a container to hold the EPIRB somewhere in the vicinity of the embarkation station. Experience with the float-free EPIRBs in containers already on U.S. vessels indicates that operators are concerned with theft of the devices, so that they are often removed from their containers and locked up on the bridge or in the radio room. If the EPIRB is not returned before the vessel sails, it may not be available for use in case of a casualty. Even if the survival craft EPIRB is stowed in its proper location, it may be forgotten in the course of an abandonment.

If the survival craft EPIRBs are stowed in the lifeboats and liferafts, they should be more secure against theft, and would be available for use whenever the survival craft is launched. This arrangement would not depend
upon someone remembering to bring the unit along.

An EPIRB in an inflatable liferaft can be made to automatically activate when the liferaft floats free and inflates. Since this EPIRB is on the same frequency as the float-free EPIRB already required on these vessels, the present Class A EPIRB could be eliminated from the regulations (it is not required in the new SOLAS Chapter III).

A new satellite EPIRB is expected to be developed as part of the Future Global Maritime Distress and Safety System (FGMDSS). This system will be part of a completely revised SOLAS Chapter IV that is expected to be completed in a few years. A separate rulemaking project will be undertaken at that time to propose the satellite EPIRB and other changes related to the FGMDSS. The satellite EPIRB will then provide the initial alert and location of an EPIRB in an inflatable liferaft can.

The Coast Guard intends to propose that an EPIRB be required in each survival craft, up to some maximum number to prevent reception problems from multiple transmission sources. The EPIRBs in float-free liferafts would be required to activate automatically when the raft floats free and inflates. The requirement for the present float-free EPIRB would be eliminated. Since most vessels will have two lifeboats and two liferafts, this would mean a total of 4 EPIRBs rather than the 2 required under the new SOLAS. This would guarantee a locating beacon in each survival craft. Since these EPIRBs are relatively inexpensive ($150-$300 each), this requirement should be considered to be well worth the cost.

Lifeboat and Liferaft Launching Arrangements on MODUs

The MODU regulations would be revised to require that new MODUs (other than drillships) be built so that lifeboats are launched in a direction headed away from the unit, rather than the broadside arrangement that is usually used at present. This will enable the boats to apply power immediately in the direction away from the unit. A boat-launched broadside on the weather side of a MODU in distress will be driven farther into or under the unit during the time it takes to turn it away.

The boats on the OCEAN RANGER would have cleared a transverse member between the hulls at a list of only up to 12°. There is a possibility that this member was out of the water and a boat that was damaged struck it while it was being launched. A requirement for clearance at a 20° list would improve the chances for successful launching and would be consistent with the new SOLAS requirements for conventional ships.

These changes can be introduced now and result in immediate improvement of the survival craft launching arrangements on MODUs. The MODU regulations would be revised to require that new MODUs (other than drillships) be built so that lifeboats are launched in a direction headed away from the unit, and that the lifeboats and davit-launched liferafts meet the launching clearance requirements as proposed.

SUMMARY: The Service gives notice that a public hearing will be held in Omaha, Nebraska on the proposed determination of endangered and threatened status for the piping plover and that the comment period on the proposal will be reopened. This bird is found on the Atlantic and Gulf Coasts, Great Lakes, and northern Great Plains. This hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened. The public hearing will be held from 5:30 p.m. to 10:00 p.m. on Friday, January 18, 1985, in Omaha, Nebraska. The comment period, which originally closed on January 7, 1985, now closes January 28, 1985.

ADDRESSES: The public hearing will be held at the Peter Kiewit Conference Center Room 212A, 1313 Farnam on the Mall, Omaha, Nebraska. Written comments and materials should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials will be available for public inspection during business hours, by appointment, at the above address.

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered and Threatened Status for the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and reopening of comment period.

SUMMARY: The Service gives notice that a public hearing will be held in Omaha, Nebraska on the proposed determination of endangered and threatened status for the piping plover and that the comment period on the
December 20, 1984 the Service received a letter from the Audubon Society of Omaha, Nebraska requesting a public hearing on the proposed rule to determine endangered and threatened status for the piping plover. On the same day the Service received a letter from Tom Pitts & Associates, Consulting Engineers, Loveland, Colorado, on behalf of the Colorado-Nebaska-Wyoming Interstate Task Force on Endangered Species, requesting three public hearings in Colorado, Nebraska, and Wyoming on the proposal to determine endangered and threatened status for the piping plover. The Service will hold only one public hearing and it will be in Nebraska. The Service has scheduled the hearing for January 18, 1985, from 5:30 p.m. to 10:00 p.m., at the Peter Kiewit Conference Center Room 102A, 1313 Farnam on the Mall, Omaha, Nebraska. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 to 10 minutes, if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at the hearing or mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period on the proposal. Written comments may now be submitted until January 28, 1985 to the Service office in the ADDRESSES section.

Author

The primary author of this notice is John G. Sidle, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.


List of Subjects in 50 CFR Part 17

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

Harvey K. Nelson,
Regional Director.

[FR Doc. 84-33300 Filed 12-23-84; 8:45 am]
BILLING CODE 4310-56-M
A draft environmental impact statement will be prepared for the project features and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from James H. Olson, State Conservationist, at the address above or by telephone (717) 782-4453.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that the environmental impact statement is being prepared for the West Branch of the Brandywine Creek Watershed, Chester, Delaware and Lancaster Counties, Pennsylvania.

**For Further Information Contact:**
James H. Olson, State Conservationist, Soil Conservation Service, Box 985 Federal Square Station, Harrisburg, Pennsylvania 17108; telephone (717) 782-4453.

**Supplementary Information:** The environmental assessment of this federally assisted action indicates that the action may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James H. Olson, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for flood prevention, water supply, and watershed protection. Proposed for installation are one flood prevention dam, two multiple-purpose dams for flood prevention and water supply, and land treatment measures.
Margaret Woody,
Management Analyst.
[FR Doc. 84-33805 Filed 12-23-84; 8:45 am]
BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Quarterly Report on Exports to Service Equipment Shipped. Against a Validated Export License
Form Number: Agency—EAR 376.4(d); OMB—0625-0067
Type of Request: Renunciation of a previously approved collection
Burden: 100 respondents; 200 reporting hours
Needs and Uses: This report permits information collection should be sent to OMB Desk Officer—Sheri Fox, 395–3785.
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal 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 collection should be sent to Sheri Fox, OMB Desk Officer, Room 3325, New Executive Office Building, Washington, D.C. 20503.

Edward Michals
Departmental Clearance Officer.
[FR Doc. 84–33806 Filed 12–28–84; 8:45 am]
BILLING CODE 3510-CW-M

International Trade Administration
[A–351 404]

Certain Welded Carbon Steel Pipes and Tubes From Brazil: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.
ACTION: Notice.

SUMMARY: We have preliminarily determined that certain welded carbon steel pipes and tubes [pipes and tubes] from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have also preliminarily determined that critical circumstances do not exist in this investigation. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 11, 1985.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20223, telephone: (202) 377–3777.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that pipe and tubes from Brazil are being or are likely to be, sold in the United States at less than fair value, pursuant to section 733(b) of the Tariff Act of 1930, as amended (the Act). For two producers, Persico Pizzamiglio S.A. (Persico) and Fornasa S.A. (Fornasa), we found no sales at less than fair value.

For the remaining producer, we have found that the foreign market value of pipe and tubes exceeded the United States price on 35 percent of the sales we compared. These margins ranged from 0.03 percent to 35.24 percent. The overall weighted-average margin is 3.23 percent. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On July 17, 1984, we received a petition from the Committee on Pipe and Tube Imports on behalf of the U.S. industry producing the subject pipe and tubes. In compliance with the filing requirements of section 353.35 of our Regulations (19 CFR 353.35), the petition alleged that imports of pipe and tubes from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also alleged that critical circumstances exist under section 733(e) of the Act.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping investigation. We are also investigating whether such pipe and tubes are sold in the home market at less than the cost of production. We notified the ITC of our action and initiated such an investigation on August 6, 1984 (49 FR 21359). On August 31, 1984, the ITC determined that there is a reasonable indication that imports of pipe and tubes are materially injuring a United States industry (49 FR 35391).

The petitioner alleged that at least five Brazilian companies produce pipe and tubes for export to the United States. We found that three companies, Persico, Fornasa, and Apolo Produtos de Aco S.A. (Apolo), accounted for approximately 85 percent of imports to the United States during the period of investigation. Questionnaires were sent to these companies on August 11, 1984. Responses to the questionnaires were received on September 24, 1984. On October 19, 1984, petitioner alleged that respondents home market sales were at prices below their cost of production. On October 25, 1984, the Department requested that respondents submit additional information on home market sales and cost of production. Respondents submitted supplementary information on home market sales on November 13, 1984. Cost of production responses for each respondent were received on December 3, 1984.

Scope of Investigation

The products covered by this investigation are "certain welded carbon steel pipes and tubes," which include certain small-diameter circular welded carbon steel pipes and tubes. Small-diameter circular welded carbon steel pipes and tubes, with an outside diameter of 0.375 inch or more but not over 4.5 inches and with a wall thickness of not less than 0.065 inch, are currently classified in the Tariff Schedules of the United States, Annotated (TSUSA) under items...
610.3231, 610.3234, 610.3241, 610.3242, and 610.3243. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120 and A-135.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales in the United States by the domestic producer, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

Fornasa did not submit adequate information concerning selling prices to the United States in a proper form and a timely fashion. Specifically, the computer tape submitted by Fornasa was not usable by the Department. A revised computer tape was not received in time for use in this preliminary determination. Therefore, for purposes of this preliminary determination, we used the best information available for United States price which was the hard copy listing of sales submitted by Fornasa. Due to the large volume of transactions involved, we selected and made comparisons for twenty representative product groupings. These product groupings account for 36 percent of the U.S. sales by volume.

For each company, we calculate the purchase price based on the FOB or C&F price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling charges, and ocean freight. We also made an adjustment for the amount of taxes imposed on such sales in Brazil which were not collected by reason of the exportation of the merchandise to the United States.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales. We compared identical merchandise where possible. Where no identical merchandise was sold in the home market, in accordance with section 771(16) of the Act, we made comparisons based on type, grade and dimensional categories selected by a Commerce Department industry expert. For the purposes of our final determination, we will seek additional information to further delineate the categories used in our comparisons.

The petitioner alleged that sales in the home market were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials fabrication and general expenses. We found sufficient sales in the home market above the cost of production to allow us to use home market prices in accordance with section 773(a)(1)(A) of the Act to determine foreign market value.

We calculate the home market price on the basis of the FOB delivered, unpacked, price to unrelated purchasers. We made a deduction for foreign inland freight. We made adjustments for credit expenses and sales commissions on U.S. and home market sales in accordance with § 353.3 of the Regulations (19 CFR 353.15). We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(4)(c) of the Act. These adjustments for differences in the merchandise were based on differences in the cost of material direct labor, and directly related factory overhead. Since the merchandise subject to this investigation was sold unpacked in both markets no adjustment was made for packing.

The following claims were disallowed in calculating foreign market value. Respondents claimed a circumstance of sale adjustment for warehousing expenses. We did not allow this adjustment because there expenses were incurred prior to the sale of the merchandise. Respondents claimed amounts for indirect sales expenses in the home market, and quantity and distributor discount of these claims has been allowed at this time because of insufficient documentation and explanation. We will seek further information for purposes of our final determination.

Determination of Critical Circumstances

The petitioner alleged that imports of pipe and tubes from Brazil present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of pipe and tubes from Brazil in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found no antidumping determinations on the subject pipe and tubes from Brazil.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. In this case, the margin calculated on the basis of the responses to the Department's questionnaire are not sufficiently large that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that the importer did not have knowledge of sales at less than fair value. Since there is no history of dumping in the United States or elsewhere and we have no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, we determine that critical circumstances do not exist with respect to imports of this product from Brazil.

Verification

We will verify all information used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of pipe and tubes from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United
States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

<table>
<thead>
<tr>
<th>Manufacturer</th>
<th>Weighted-Average Margin (Percentage)</th>
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<tbody>
<tr>
<td>Penko</td>
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</tr>
<tr>
<td>Fortisa</td>
<td>3.23</td>
</tr>
<tr>
<td>Apollo</td>
<td>3.23</td>
</tr>
<tr>
<td>All other manufacturers/ producers/exporters</td>
<td>3.23</td>
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</tbody>
</table>

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether the domestic industry is materially injured, or threatened with material injury, by reason of these imports.

**Public Comment**

In accordance with section 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 23, 1985, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-093, at the above address within 10 days of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 14, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.
December 24, 1984.

[FR Doc. 84-33834 Filed 12-28-84; 8:45 am]
BILLING CODE 3510-05-M

**[C-301-401]**

Preliminary Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Colombia

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel. The estimated net bounty or grant is 14.29 percent ad valorem for textiles and 7.93 percent ad valorem for apparel. We are directing the U.S. Customs Service to suspend liquidation of all entries of certain textile mill products and apparel from Colombia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net bounty or grant.

If these investigations proceed normally, we will make our final determinations by March 7, 1984.

These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from Colombia." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we are changing the titles of these investigations to "Certain Textile Mill Products and Apparel from Colombia." The scope of these investigations remains the same as announced in the initiation.

**EFFECTIVE DATE:** December 31, 1984.

**FOR FURTHER INFORMATION CONTACT:** Tom Bombelles or Vince Kane, 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) 377-3174 or 377-5414.

**SUPPLEMENTARY INFORMATION:**

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), the being provided to manufacturers, producers or exporters in Colombia of certain textile mill products and apparel. For purposes of these investigations, the following programs are preliminarily found to confer a bounty or grant:

- Export Rebates under Law 67 of 1979;
- Export Financing through the Export Promotion Fund; and
- Preferential Financing through the Industrial Development Institute.

We estimate the net bounty or grant to be 14.29 percent ad valorem for textiles and 7.93 percent ad valorem for apparel.

**Case History**

On July 23, 1984, we received a petition from 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 textile mill products and apparel. In compliance with the filing requirements of § 353.29 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 13, 1984, we initiated such investigations (49 FR 32033). We stated that we expected to issue preliminary determinations by October 16, 1984. On September 21, 1984 we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 20, 1984 (49 FR 40938).

Since Colombia is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is...
dutiable, sections 303(a)(1) and (b) of the Act apply to these investigations. 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 material injury to a U.S. industry.

Due to the broad scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Colombia in Washington, D.C., on August 24, 1984. Based on the response to the preliminary questionnaire, we selected four textile producers and exporters and three apparel producers and exporters, who account for at least 60 percent of the textiles and apparel exported to the United States from Colombia. On October 23, 1984 we presented a supplemental questionnaire to the government of Colombia in Washington, D.C. requesting responses from these companies. We received responses to our supplemental questionnaire on December 4, 1984. One textile producer, Polymer S.A., did not respond to our questionnaire. Although the response to the preliminary questionnaire states that Polymer receives certain export benefits, counsel for respondents has informed us that Polymer does not, in fact, export any products under investigation. One company, Creaciones Inesita, requested exclusion from these investigations on the grounds that it does not export any textile mill products or apparel.

Certain respondents in the Certain Textile Mill Products and Apparel investigations have raised the issue as to whether petitioners have standing to file these cases. We have addressed this issue in our preliminary determination of Certain Textile Mill Products and Apparel from Indonesia, to be published on December 21, 1984. See that determination notice for our comments on the issue of petitioners' standing.

Scope of the Investigation

The products covered by these investigations are certain textile mill products and apparel, which are described in Appendix A, attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 16000).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry for benefits under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Determined To Confer Bounties or Grants

- We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel under the following programs.

A. Export Rebates Under Law 67 of 1979

- The government of Colombia provides payments to exporters of textiles and apparel in the form of negotiable tax certificates ("CATs"), which may be used for the payment of various taxes (i.e., income, sales and customs taxes), or may be sold on the stock exchange at a discount. Rebates are calculated as a percentage of the domestic value-added content of the exported product. In its questionnaire response, the government of Colombia itemized the taxes eligible for inclusion in the CAT rebate, and we concluded that a significant portion of the CAT rebate applies to indirect taxes physically incorporated in the exported products. Therefore, we preliminarily determine that, with respect to textiles and apparel, the CAT program operates for the purpose of rebating indirect taxes.

- In its questionnaire response, the government of Colombia states that each of the major product categories of textiles and textile products was analyzed for the 1978 tax incidence study. Cost structures were established on a firm-by-firm basis, and the tax incidence on each input was calculated to determine the value of the taxes in the F.O.B. value of the final product. Examination of the supporting documents provided with the questionnaire response leads us to conclude that there is a link between eligibility for the rebates and indirect taxes paid. Therefore, we preliminarily determine that our second test is met.

- With respect to our third test, we have reviewed the documents submitted by the government showing its detailed calculation of the rebate rates. These calculations itemize the inputs and list import taxes and domestic indirect taxes, as well as indirect taxes.
embedded in domestically-produced inputs. The government also includes in its calculation of the CAT rebate rate payroll taxes and allowances for reductions in the value of the CAT due to devaluation and delays in receipt of the rebate.

Because the indirect tax incidence is less than the full rate of CAT rebate, we preliminarily determine that there is an excessive remission of indirect taxes on exported goods. To determine the benefit from this excessive remission of indirect taxes, we have calculated the average indirect tax incidence on physically incorporated inputs for textiles and apparel, using tables provided by the Colombian government which show the average cost structures incidence of indirect taxes on physically incorporated inputs in textiles and apparel.

The questionnaire response states that the amount of CAT received varies by shipment, because rebates are calculated as a percentage of the domestic value-added in each export shipment. Therefore, to estimate the amount of over-rebate, we calculated the amount of CATs earned by each company on exports to the U.S. during the period of review, as reported in the questionnaire response, and divided this amount by each company’s exports to the U.S. From this rate of rebate, we subtracted our estimated percentage indirect tax incidence on physically incorporated inputs for textiles or apparel, as appropriate. We then weight-averaged the resulting over-rebate rates to preliminarily determine a bounty or grant of 1.05 percent ad valorem for textiles and 2.95 percent ad valorem for apparel.

On April 1, 1984, the Colombian government abolished the CAT program and replaced it with a new tax reimbursement program, the CET program. The Colombian government states in its questionnaire response that rebates under this program are based on updated tax incidence calculations, based on data from the 1978 study. Because this program was not used by the companies under investigation during the study period, we have not determined whether it confers a countervailable benefit.

B. Export Financing Through the Export Promotion Fund

1. Working Capital Loans Under Resolution 59. Colombian producers of certain textile mill products and apparel for export receive short-term financing under Resolution 59. Resolution 59 was passed by the Constitutional Board of Colombia on August 30, 1972. It authorizes the provision of working capital loans to companies which produce, warehouse or sell merchandise other than coffee and petroleum exclusively for export. Resolution 59 financing is administered by the Export Promotion Fund ("PROEXPO"), a government agency, and is disbursed by banks and other financial institutions.

According to the response of the government of Colombia, the interest rate on such loans during the period of investigation was 15 percent or 19 percent, depending on the date the loan was received. The duration of these loans is six months, and the maximum interest rate is 10 percent of the value of the merchandise. Four of the firms under investigation, two textile producers and two apparel producers, had loans outstanding under Resolution 59 during the period of review.

In order to determine whether short-term financing under Resolution 59 provides benefits which constitute export subsidies, we compared the 15 percent and 19 percent rates to the appropriate benchmark. As specified in the Subsidies Appendix, the benchmark for short-term loans is the most appropriate national average commercial rate.

The Banco de la Republica, Colombia’s central bank, does not publish average commercial rates. In its response, the Government of Colombia claims that weighted-average interest rate for all government financing was 18.97 percent in 1933. The government of Colombia also provided a table showing that the weighted-average interest rate for all financing provided by Colombia’s major financial institutions was 23.41 percent in 1933. However, we do not believe these rates represent appropriate benchmarks. The first rate is based on interest rates on potentially countervailable government funds, including PROEXPO. The second rate represents an average rate of all outstanding credit, rather than the average interest rate charged on loans granted during the period of review.

The Business International Corporation’s Financing Foreign Operations ("FFO") reports for May and August 1983 indicate that nominal rates for short-term loans from private banks in Colombia averaged around 36 percent throughout 1983. The FFO is a reputable publication that is widely used as a source of information on current business trends around the world. We found no alternative official sources of national interest rates published in Colombia. Therefore, as best evidence, we have preliminarily chosen a rate of 36 percent as the short-term commercial benchmark for 1983. We intend to seek additional information on short-term commercial interest rates at verification.

Using this benchmark, we calculate an estimated bounty or grant of 2.55 percent ad valorem for textiles and 1.40 percent ad valorem for apparel.

2. Special Line of Credit to the Textile Industry. Petitioners allege that in 1932 and 1933 the Colombian government established special credit lines for the textile and apparel industry at below-market rates. The government response indicates that PROEXPO administers this special line of credit to the textile industry, which refinanced all outstanding PROEXPO loans under Resolution 14, Resolution 59, and certain other debts. The loans under this program were refinanced in December 1932, for a term of two years, at an interest rate of 18 percent. Three textile producers and one apparel producer under investigation had loans outstanding under this program during the period of review.

It is unclear from the government response whether this program was contingent upon exportation. However, since the special credit line was extended specifically to loans administered by PROEXPO we preliminarily determine that this program confers a bounty or grant on exports of the subject merchandise.

To calculate the benefit from these loans, we treated loans of one year or less as short-term loans. For loans of over one year, we used the long-term loan methodology described in the Subsidies Appendix. Company-specific benchmark information was not provided in the questionnaire response. Furthermore, we were unable to find published statistics concerning long-term commercial loans in Colombia. Therefore, as the long-term loan benchmark, we used the 25 percent annual interest rate for short-term commercial loans as the best information available. We intend to seek more information on commercial long-term loan rates at verification. One company is in a bankruptcy proceeding and paid no interest during the period of review. We have no information whether suspension of interest payments is a normal procedure for a Colombian bankruptcy reorganization, and therefore we treated loans to this company as zero-interest loans. We calculated estimated subsidy rates of 3.4 percent ad valorem for textiles and 3.03 percent ad valorem for apparel.

3. Credits for Capital Investment Under Decree 223. Under Decree 223 PROEXPO provides, through commercial banks, long-term financing for capital investment. The annual amount of the
loan cannot exceed two million pesos and the maximum term is five years. The annual interest rate for these loans is 14 percent. Two of the companies under investigation, representing both textile and apparel exports, had loans outstanding under this program during the period of review.

This financing is available only to applicants whose investment projects are approved by PROEXPO. Since PROEXPO financing is limited to exporters, we preliminarily determine that this program confers a bounty or grant on exports of the subject merchandise. We calculated the benefit from these loans using the same methodology as for the Special Credit Line for Textiles described above. We calculated estimated subsidy rates of 0.01 percent ad valorem for textiles and 0.52 percent ad valorem for apparel.

C. Preferential Financing Through the Industrial Development Institute

The Industrial Development Institute ("IFI") is administered by the Colombian Ministry of Economic Development, and provides long-term loans for purchases of new equipment and working capital. The initial questionnaire response of the Colombian government indicated that this program was used by two textile companies under investigation. No information has been provided, however, concerning eligibility requirements or the extent of usage of the program by other industries in Colombia. We preliminarily determine, as best information available, that IFI financing is limited to specific enterprises of industries or groups of enterprises of industries and therefore confers a countervailable benefit on producers of the subject merchandise.

Under the terms of the loans granted to one company, interest payments are not due until 1984. We believe this deferral is consistent with normal commercial practices. Therefore, no benefit was conferred on this company during the period of review. We were not provided with specific information on the amount of loans provided to the second company. Therefore, as best information available, we estimated the benefit received on the basis of the highest rate of benefit received by that company on any other long-term financing program. We found an estimated bounty or grant of 0.26 percent ad valorem for textiles.

II. Programs Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Colombia of certain textiles and textile products under the following programs.

A. Employee Training Program

El Servicio Nacional de Aprendizaje ("SENA") provides general education programs to unemployed and underemployed workers in Colombia. According to the response, this program is not limited in its application. We preliminarily determine that this program does not confer a bounty or grant because it is not limited to a specific industry, group of industries or region.

B. Duty and Tax Exemptions for Imported Materials Under the Plan Vallejo

The Plan Vallejo provides exemptions from customs duties and the Colombian sales tax for imported raw materials and intermediate inputs which are subsequently exported as a component part of the finished product. The exemption from import charges imposed on items physically incorporated into the exported product is not countervailable. On that basis, we preliminarily determine that this program does not confer a bounty or grant.

III. Programs Determined Not To Be Used

We preliminarily determine that the companies under investigation did not use the following programs which were listed in our notice of initiation.

A. Preferential Financing through the Private Investment Fund

The Private Investment Fund (FIP) provides medium and long-term financing to certain sectors and for selected projects. We preliminarily determine that this program was not used by the companies under investigation.

B. Free Industrial Zones

The Colombian government has established Free Industrial Zones ("FIZe") dedicated to export production. Manufacturers located in a FIZ receive certificates worth 15 percent of the f.o.b. value of the Colombian value-added on exported merchandise. We preliminarily determine that this program was not used by the companies under investigation.

C. Export Insurance

Decree 444 of 1967 created an export credit insurance program to provide commercial, political and special risk insurance on exports. The program is managed by a private company under contract with PROEXPO. We preliminarily determine that this program was not used by the companies under investigation.

D. Duty and Tax Exemptions for Capital Equipment Under the Plan Vallejo

The Plan Vallejo provides exemptions from customs duties and the Colombian sales tax for capital equipment which is imported exclusively for the production of exports. We preliminarily determine that this program was not used by the companies under investigation.

IV Programs for Which Additional Information is Needed

A. Countertrade

Petitioners allege that producers and exporters of textiles and apparel receive subsidies through a government-mandated program of countertrade, authorized by Decree 370 of February 15, 1984. Because the government of Colombia did not provide us with a complete list of transactions made under this program, we need additional information to determine whether this program was used by the companies under investigation.

Verification

In accordance with section 770(a) of the Act, we will verify the data used in making our final determinations. As previously stated, we will not accept any statement in the response that cannot be verified for our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain textiles and textile products from Colombia which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register and to require an ad valorem cash deposit or bond for each such entry of this merchandise as follows:

<table>
<thead>
<tr>
<th>Product</th>
<th>Ad valorem (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certain textile mill products</td>
<td>14.29</td>
</tr>
<tr>
<td>Apparel</td>
<td>7.93</td>
</tr>
</tbody>
</table>

This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on February 8, 1985 at the U.S.
Department of Commerce, room 6011, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Individuals who wish to participate in the hearing must submit a written request to the Deputy Assistant Secretary for Import Administration, room B-009, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 1, 1985.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).


Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

Appendix A—List of TSUSA Codes
Under Which There Were Imports From Colombia Into the United States During 1983

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:

Yarns

<table>
<thead>
<tr>
<th>Yarns and Threads</th>
<th>3053020</th>
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Fabric

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Textile Furnishings

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Headwear

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Vol. 49, No. 252 / Monday, December 31, 1984 / Notices 50757
Certain Small Diameter Circular and Light-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Spain: Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small diameter circular and light-walled rectangular welded carbon steel pipes and tubes (welded pipes and tubes) are being, or are likely to be, sold in the United States at less than fair value. In addition, we preliminarily determine that critical circumstances do exist with respect to imports of welded pipes and tubes from Spain. We are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the “Suspension of Liquidation” section of this notice. If these investigations proceed normally, we will make final determinations by March 11, 1985.

EFFECTIVE DATE: December 31, 1984.


SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that welded carbon steel pipes and tubes from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1677d) (“the Act”). We have found margins on sales of welded pipes and tubes for the three firms investigated.

For light-walled rectangular welded carbon steel pipes and tubes, we have found margins for Perfil en Frio, S.A. ("PERFRISA") and Construcciones y Derivados, S.A. ("CONDESA").

For circular welded carbon steel pipes and tubes, we have found margins for Jose Maria Anstrain—Madrid, S.A. ("Anstrain") and PERFRISA.

The weighted-average margins for individual companies investigated are given for each product in the “Suspension of Liquidation” section of this notice.

The estimated margins for two of the producers, CONDESA and PERFRISA, were based on the best information available, as explained below in the sections of this notice which describe our fair value comparisons and calculations. Those margins could change substantially if new information is furnished in a timely fashion and verified.

If these investigations proceed normally, we will make final determinations by March 11, 1985.

Case History

On July 17, 1984, we received a petition from the Committee on Pipe and Tube Imports, a trade association composed of domestic pipe and tube producers, filed on behalf of the welded pipe and tube industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), petitioner alleged that imports of welded pipes and tubes from Spain are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry. The petition also alleged that critical circumstances exist under section 733(e) of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to institute antidumping investigations. We notified the ITC of our action and initiated such investigations on August 6, 1984 (49 FR 32246). The ITC subsequently found, on August 31, 1984, that there is a reasonable indication that imports of welded pipes and tubes are materially injuring, or are threatening material injury to, a United States industry.

The petitioner alleged that at least four Spanish companies produce welded pipes and tubes for export to the United States. We found that two companies, PERFRISA and Anstrain, accounted for approximately 98 percent of the circular welded pipes and tubes exported to the United States during the period of investigation and that two companies, CONDESA and PERFRISA, accounted for approximately 99 percent of the light-walled rectangular welded pipes and tubes exported to the United States during the period of investigation.

Questionnaires were presented to these companies in Spain on September 21, 1984. Anstrain responded to the questionnaire on November 2, 1984. PERFRISA and CONDESA did not respond by their October 29, 1984 deadline and on November 6, they were advised through their counsel that failure to submit adequate questionnaire responses could force the Department to make its preliminary determinations based on the best information available. On November 8, 1984, PERFRISA and CONDESA did submit computer tapes, but did not respond to any other portion of the questionnaire. Without the questionnaire response, we are not able to analyze the contents or to ascertain the sufficiency of the data submitted. By a hand-delivered letter dated November 30, 1984, to counsel for these two respondents, the Department reiterated its position that failure to file a proper and complete response could cause preliminary determinations based on the best information available. To date, no further responses have been received from PERFRISA or CONDESA.

Scope of the Investigations

The products covered by these investigations are “certain welded carbon steel pipes and tubes.”
specifically, certain small-diameter circular welded carbon steel pipes and tubes and light-walled rectangular welded carbon steel pipes and tubes.

Small-diameter circular welded carbon steel pipes and tubes, with an outside diameter of 0.375 inch or more but not over 4.5 inches and with a wall thickness of not less than 0.065 inch, are currently classified in the Tariff Schedules of the United States, Annotated (TSUSA) under items 610.3231, 610.3234, 610.3241, 610.3242, and 610.3243. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120 and A-135.

Light-walled rectangular (including square) welded carbon steel pipes and tubes having a wall thickness of less than 0.156 inch are currently classified under TSUSA item 610.4928. These products, commonly referred to in the industry as mechanical or structural tubing, are generally produced to ASTM specifications A-500 or A-513.

Since PERFRISA, CONDESA and Aristrain produced and exported substantially all of the welded pipes and tubes shipped from Spain to the United States during the period of investigation, we limited our investigations to these three companies.

We investigated sales of welded pipes and tubes by these respondents during the period from January 1, 1984 to June 30, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States by Aristrain were made at less than fair value, we compared the United States price with the foreign market value as determined by sales in the Spanish home market.

To determine whether sales of the subject merchandise in the United States by PERFRISA and CONDESA were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available for these two manufacturers as required by section 776(b) of the Act, because adequate responses were not submitted in an acceptable form.

United States Price

As provided in section 772(b) of the Act, for Aristrain we used the purchase price of the subject merchandise to represent the United States price, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated Aristrain's purchase price based on the FOB Spanish port, unpacked price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and foreign brokerage and handling charges. We made adjustments for taxes imposed directly on this merchandise when sold in Spain, which are not collected by reason of the exportation of the merchandise, pursuant to section 772(d)(1)(B) of the Act. We also made adjustments for indirect taxes, which we determined were imposed on the inputs into this merchandise, and which were rebated upon exportation.

For PERFRISA and CONDESA we calculated the purchase price by using U.S. Department of Commerce statistics to obtain weighted-average F.O.B. port prices for light-walled rectangular and small diameter circular pipes and tubes. We made deductions for inland freight based on information provided in the petition. We made adjustments for taxes imposed directly on this merchandise when sold in Spain, which are not collected by reason of the exportation of the merchandise, pursuant to section 772(d)(1)(B) of the Act. We also made adjustments for indirect taxes, which we determined were imposed on the inputs into this merchandise, which were rebated upon exportation.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Aristrain based on home market FOB factory or delivered unpacked prices to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight and discounts. In accordance with section 771(19) of the Act, we made adjustments for the cost of materials, labor and direct factory overhead associated with differences in merchandise based on type, grade, and dimensional categories selected by a Commerce Department industry expert. We have disallowed an adjustment to the home market price for the level of trade differences between the United States and the home market claimed by Aristrain because the company did not demonstrate differences in the selling costs associated with different levels of trade in the home market.

We were unable to use home market sales prices for PERFRISA and CONDESA for the reasons stated above. In such instances we are required by section 776(b) of the Act to use the best information available. The best information available for calculating foreign market values was the cost of manufacturing data provided by the petitioner, which we converted to constructed value according to section 773(e) of the Act.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching final determinations in these investigations.

Preliminary Affirmative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of welded carbon steel pipes and tubes from Spain present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of welded carbon steel pipes and tubes from Spain in the United States or elsewhere, we reviewed past antidumping findings of the Department of Commerce as well as past Department of Commerce antidumping duty orders. We also reviewed the dumping actions of other countries. We found no past dumping determinations on welded carbon steel pipes and tubes from Spain.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated by the Department are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. In this case, the margins calculated are sufficiently large, except with respect to Aristrain, that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that this test is met for imports of the merchandise from all producers, except Aristrain. If the margins calculated for Aristrain in our final determination become sufficiently
large to meet the importer’s knowledge test, we will include them in our final critical circumstances determination.

We generally consider the following concerning trends: (1) Recent trends in import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for welded carbon steel pipes and tubes from Spain for the periods immediately preceding and subsequent to the filing of the petition.

Based on our analysis of recent trade data, we find that imports of welded carbon steel pipes and tubes from Spain during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios.

Therefore, we determine that critical circumstances exist with respect to all imports of welded carbon steel pipes and tubes from Spain, except those produced by Anstran.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of welded pipes and tubes from Spain for all manufacturers/producers/exporters with the exception of Anstran which are entered, or withdrawn from warehouse, for consumption, 90 days prior to the date of publication of this notice in the Federal Register. With regard to entries of small diameter circular pipes and tubes from Anstran, we are directing the Customs Service to suspend liquidation of all entries of welded pipes and tubes which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or bond in an amount equal to the estimated weighted-average by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

| Classification | Weighted-Average Margin
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Circular Welded Pipes and Tubes</td>
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<td>Adhesive</td>
<td>9.19</td>
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<td>All Others</td>
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<td>Conduit</td>
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<tr>
<td>All Others</td>
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</table>

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations on January 31, 1985, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-039, at the above address within 10 days of publication of this notice.

Requests should contain: (1) The party’s name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by January 24, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 29 CFR 353.49, within 30 days of publication of this notice, at the above address and in at least 10 copies.


Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-33833 Filed 12-28-84; 8:45 am]

BILLING CODE 3510-D5-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for a second amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before January 22, 1985.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as “Amendment #2, Export Trade Certificate of Review, application number 64-2A002.”

FOR FURTHER INFORMATION CONTACT:

James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, Office of General Counsel, 202/377-0937 These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604, Mar. 11, 1983 (codified at 15 CFR Part 323). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards For Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares,
merchandise, or services of the class exported by the applicant,
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40, April 13, 1983.

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an amendment to an Export Trade Certificate of Review which was issued on June 18, 1984 (FR 25689, June 25, 1984) and amended on November 29, 1984 (FR 47319, Dec. 6, 1984).


Controlling Entity: Crosby Chemical Company, New Orleans, LA. Amendment: Crosby Trading Company (Crosby) seeks to amend its Certificate of Review. The original certificate required Crosby to conduct all its meetings with interested producers within a thirty day period. The present amendment would allow Crosby to conduct a total of three such meetings before April 1, 1985. The expiration date of the certificate would remain May 28, 1985. The protections extended to Crosby and members named in the first amended certificate remain limited to the planning stage of a proposed export joint venture.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.


Irving P. Margulies,
General Counsel.

[FR Doc. 84—33839 Filed 12—23—84; 8:45 am]

Elliing Code 3510-DR-M

Minority Business Development Agency

Financial Assistance Application Announcements; Indianapolis, IN
AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first nine (9) months is estimated at $140,230 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Indianapolis, Ind. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $119,212 in Federal funds and a minimum of $21,038 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05—10—83003-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.
Financial Assistance Application
Announcements; Gary Hammond—E. Chicago, IN
AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applicants under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first nine (9) months is estimated at $140,250 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Gary-Hammond-E Chicaco, Ind. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $119,212 in Federal funds and a minimum of $21,038 in non-Federal funds (which can be a combination for cash, in-kind contribution and fees for service). The award number will be 05-10-85002-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

[Financial Assistance Application Announcements; Gary Hammond—E. Chicago, IN]
AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applicants under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first nine (9) months is estimated at $140,250 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Gary-Hammond-E Chicago, Ind. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $119,212 in Federal funds and a minimum of $21,038 in non-Federal funds (which can be a combination for cash, in-kind contribution and fees for service). The award number will be 05-10-85002-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.
SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first fifteen (15) months is estimated at $233,750 for the project performance of April 1, 1985 to June 30, 1986. The MBDC will operate in the Cincinnati, Ohio Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $198,687 in Federal funds and a minimum of $35,063 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-85007-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions. The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC’s satisfactory performance, the availability of funds, and Agency priorities.

DATES: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Federal Register / Vol. 49, No. 252 / Monday, December 31, 1984 / Notices 50763

Financial Assistance Application Announcements; Cincinnati, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first fifteen (15) months is estimated at $233,750 for the project performance of April 1, 1985 to June 30, 1986. The MBDC will operate in the Cincinnati, Ohio Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $198,687 in Federal funds and a minimum of $35,063 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-85007-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions. The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC’s satisfactory performance, the availability of funds, and Agency priorities.

DATES: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.
Financial Assistance Application
Announcement Dayton, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first nine (9) months is estimated at $140,250 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Dayton, Ohio Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $319,212 in Federal funds and a minimum of $21,038 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-85001-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations; the resources available to the firm in providing management and technical assistance; the firm’s estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as a MBDC’s satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION:
Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Minority Business Development Center (Catalog of Federal Domestic Assistance)
David Vega, Acting Regional Director, Chicago Regional Office.

Financial Assistance Application
Announcements, Milwaukee, WI

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first nine (9) months is estimated at $206,250 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Milwaukee, Wis. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $30,938 in Federal funds and a minimum of $20,062 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-85004-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm’s proposed approach to performing the work requirements included in the application; and the firm’s estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as a MBDC’s satisfactory performance, the availability of funds, and Agency priorities.

DATES: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION:
Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.
Financial Assistance Application Announcements; St. Louis, MO

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first nine (9) months is estimated at $338,250 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the St. Louis, Missouri Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $237,512 in Federal funds and a minimum of $90,738 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 07-30-85005-01. The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying. The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is January 25, 1985. Applications must be postmarked on or before January 25, 1985.


FOR FURTHER INFORMATION CONTACT: David Vega, Acting Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11,800 Minority Business Development (Catalog of Federal Domestic Assistance))

David Vega, Acting Regional Director, Chicago Regional Office.

December 18, 1984.

[FR Doc. 84-33679 Filed 12-23-84; 8:45 am]
BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations on Certain Man-Made Fiber Apparel in Category 659pt. (Infants' Sets) From Taiwan

December 20, 1984.

On November 30, 1984, the American Institute in Taiwan (AIT), under Section 204 of the Agricultural Act of 1950, as amended (7 U.S.C. 1654), requested the Consultation Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of other wearing apparel of man-made fibers in Category 659pt. (infants' sets in TSUSA numbers 333.2042, 333.2050, 333.2350, 333.6550, 333.9261, and 333.9263), produced or manufactured in Taiwan.

The purpose of this notice is to advise that if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber apparel in Category 659, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of Category 659pt. (infants' sets) is invited to submit such comments or information to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States." Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-33679 Filed 12-23-84; 8:45 am]
BILLING CODE 3510-DK-M
or export licenses issued by the exporting country for these products in Category 600 may request a waiver of the requirement for the 604 textile category classification which becomes effective January 1, 1985. Such importers should submit a request for waivers to Walter C. Lenahan, Chairman of the Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, Washington, D.C. 20203. Submissions made in any request for a waiver are subject to Section 1001 of Title 19 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-33947 Filed 12-23-84; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 14 and related clauses in Part 52.214 and DD Form 1630 published in Supplement 4.

Information concerns certain data required to support use of the formal advertising method of contracting including requirements for placement on Research and Development Bidders' Lists.

Reporting is necessary to permit determination of whether or not a firm has necessary capability to satisfy R&D requirements.

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 17 and related clauses in Part 52.217

Not including 17.71 master agreements for alteration and repair of vessels or matters covered by other clearances (17.74).

Information concerns certain data required to support use of various types of contracts (e.g., those containing economic price adjustment provisions). Reporting is necessary to permit use of certain types of contracts (e.g., verification of cost increases triggering economic price adjustments).

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Army Veterans Survey

Requiring qualified individuals for Army enlistment is predicted to become increasingly difficult. The Army veterans survey will measure the attitudes of recent Army veterans and determine the effect on enlistment.

Individuals

Responses 8,000

Burden hours 3,000
Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

dates of meeting: Tuesday & Wednesday, 22 & 23 January 1985 (and Thursday, 24 January 1985, if necessary).

Times: 0830–1700 hours (Open).

Place: The Presidio of Monterey, California.

Agenda

The Army Science Board Ad Hoc Subgroup on Soldier Research Issues will meet for briefings and discussions on the interaction between soldier-oriented research and the National Training Center; for an overview by the ART's (U.S. Army Research Institute for the Behavioral and Social Sciences) field unit in Monterey; and for an Executive Session to review study progress to date. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3095.

Mara P. Winters,

Acting Administrative Officer, Army Science Board.

[FR Doc. 84–38320 Filed 12–28–84; 8:45 am]

DEPARTMENT OF ENERGY

Extension of Public Comment Period and Meeting on a Panel's Review and Findings of Ongoing Health Effects and Epidemiological Studies of Operations at the Savannah River Plant

AGENCY: Department of Energy.

ACTION: Extension of a 30-Day Public Comment Period.

SUMMARY: On November 30, 1984, the Department of Energy (DOE) announced the initiation of a 30-day public comment period and the holding of a public meeting on a panel's review and findings regarding epidemiological studies of persons working at and/or living around DOE's Savannah River Plant in South Carolina (FR 49–232, pages 47095–47096). The panel review was conducted by the U.S. Department of Health and Human Services' Centers for Disease Control (CDC) at DOE's request.

Pursuant to DOE's announcement, a public meeting on the review panel's recommendation was held on December 18, 1984 in Aiken, South Carolina. Based on requests for additional time to prepare comments, DOE has decided to extend the previously announced public comment period of December 1, 1984, through December 30, 1984, until January 31, 1985.

Written comments on the CDC panel's recommendation may be submitted at any time during the extended public comment period and should be directed to Mr. Grover A. Smithwick, at the address below. After the public comment period, the Department of Energy will prepare a report summarizing the comments received during the public comment period. A final DOE position will be developed considering the public comments received and the recommendations of the CDC panel.

DATES AND TIMES: The public comment period began on December 1, 1984, and will now end on January 31, 1985. All written comments postmarked by January 31, 1985, will be considered by the Department of Energy in determining its final position.

Availability of Panel Recommendations

Copies of the CDC panel's report entitled "Epidemiologic Projects Considered Possible to Undertake in Populations Around the Savannah River Plant," are available for inspection at the following reading rooms and libraries:

Atlanta Public Library, 1 Margaret Mitchell, NW, Atlanta, Georgia 30333
Augusta Regional Library, 632 Greene Street, Augusta, Georgia 30901
Burke County Library, Fourth Street, Waynesboro, Georgia 30830
Allendale-Hampton-Jasper Regional Library, War Memorial Building, Court House Square, Allendale, South Carolina 29810
Beaufort County Library, 710 Craven Street, Beaufort, South Carolina 29902
Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201
Chatham County Public Library, 202 Bull Street, Savannah, Georgia 31401
Stutsboro Regional Library, 124 South Main Street, Statesboro, Georgia 30458
Aiken-Bamberg-Barnwell-Edgefield Regional Library, 1507 Georgia Avenue, North Augusta, South Carolina 29841
Aiken County Public Library, 435 Newberry Street SW, Aiken, South Carolina 29801
South Carolina State Library, 1500 Senate Street, Columbia, South Carolina 29201
U.S. Department of Energy, Gregg-Graniteville Library, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801


In addition, copies of the report may also be obtained by contacting Mr. Grover A. Smithwick at the address below.

Addresses: Written comments, requests for copies of the CDC panel's report and request for further information on the extended public comment period should be directed to: Mr. Grover A. Smithwick, Acting Assistant Manager for Health, Safety, and Environment, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29801, (803) 725–3357 or 725–2253.

Envelopes should be marked "Attention: CDC Panel's Recommendations."

Copies of DOE Final Report

All written comments and the meeting transcript will be included in the report.

A copy of the Department's final position will be sent to all persons requesting a copy of the CDC panel's
Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Proposed Subsequent Arrangements; European Atomic Energy Community


The subsequent arrangements to be carried out under the above mentioned agreement involve approval for the supply of the following materials:

Contract Number S-EU-297, to Commissariat A L'Energie Atomique, Paris, France, 575.9 grams of natural uranium for metrology testing and for environmental testing.


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 unimical 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.


George J. Bradley, Jr.,
Deputy Assistant Secretary for International Affairs.

Office of Conservation and Renewable Energy

Conservation and Renewable Energy Subcommittee of the National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-453, 96 Stat. 779), notice is hereby given of the following advisory committee meeting:

Name: Conservation and Renewable Energy Subcommittee of the National Energy Extension Service Advisory Board.

Date and Time: Thursday, January 27, 1983, 7:45 a.m.-6:00 p.m.; Friday, January 28, 1983, 8:15 a.m.-5:00 p.m.

Place: Key Bridge Marriott Hotel, Salon D, Potomac Ballroom, 1427 Lee Highway, Arlington, Virginia 22209.


Purpose of the Parent Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs.

Tentative Agenda:

Thursday, January 27, 1983

Working Session

Plan Sixth Annual Report

Public Comment (10 minute rule)

Friday, January 28, 1983

Draft 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 judgment, 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 Susan D. Heard at 202-586-2392. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Forrestal Building, 100 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 December 28, 1984.

Howard H. Raikin,
Deputy Assistant Secretary, Management and Budget.

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefits; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Wednesday, December 19, 1984 (49 FR 49958).

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H1-023, Forrestal Building, 100 Independence Ave., SW., Washington, DC 20580, (202) 586-2303.

Verdiers Boussaifian, Department of Energy, Desk Officer, Office of Management and Budget, 720 Jackson Place, NW., Washington, DC 20503, (202) 395-7915.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed
to the OMB reviewer for the appropriate agency as shown above. If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Doe forms under review by OMB

<table>
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<tr>
<th>Form No.</th>
<th>Form Title</th>
<th>Type of request</th>
<th>Form Site</th>
<th>Response frequency</th>
<th>Response option</th>
<th>Respondent description</th>
<th>Estimated number of responses</th>
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<th>Abstract</th>
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<tbody>
<tr>
<td>EIA-714</td>
<td>Annual electric power system report</td>
<td>New</td>
<td>Anually</td>
<td>Mandatory</td>
<td>Electric utilities</td>
<td>400</td>
<td>1,200</td>
<td>Major electric utilities will provide this data which will be used to collect electric power system reliability and adequacy analysis, to prepare status reports, to monitor daily forecasts of load and system capacity and to obtain a comprehensive picture of energy generation, transmission, and distribution. See below for a description.</td>
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<td>EIA-758(A)</td>
<td>Natural gas well producer/purchaser contract report</td>
<td>New</td>
<td>Annually</td>
<td>Mandatory</td>
<td>Producers</td>
<td>423</td>
<td>22,022</td>
<td>This form collects data on natural gas sales contracts, specifically including pricing and terms and conditions. Data is needed to provide EIA with the information necessary to support statistical standards.</td>
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<tr>
<td>FERC ACV-1</td>
<td>Statement of property changes other than land and rights-of-way</td>
<td>Extension</td>
<td>Annually</td>
<td>Mandatory</td>
<td>Oil pipelines</td>
<td>142</td>
<td>23,052</td>
<td>The data collected on this form are used to record the disposition and associated costs of all real property and improvements thereof, including land and rights-of-way, held and used by the company.</td>
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<td>FERC ACV-2</td>
<td>Statement of land and rights of way property changes</td>
<td>Extension</td>
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<td>Mandatory</td>
<td>Oil pipelines</td>
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<td>FERC ACV-3</td>
<td>Summary of changes in tangible and intangible property at end of reporting period</td>
<td>Extension</td>
<td>Annually</td>
<td>Mandatory</td>
<td>Oil pipelines</td>
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<td>FERC ACV-4</td>
<td>Summary of cost of reproduction new and cost of reproduction new less depreciation</td>
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<td>FERC ACV-5</td>
<td>Inventory of property changes other than land and rights-of-way</td>
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<td>On Occasion</td>
<td>Mandatory</td>
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<td>4,029</td>
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<td>FERC ACV-6</td>
<td>Inventory of land and rights-of-way</td>
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<td>FERC ACV-7</td>
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<td>FERC ACV-8</td>
<td>Cost data for equipment and tank</td>
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<td>Mandatory</td>
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<td>60</td>
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<td>The data collected on this form identify the pipeline company cost data in support of the initial inventory and inventory changes for the period, equipment and tank used by the company in common carrier service.</td>
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<td>Mandatory</td>
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<td>The data collected on this form identify the pipeline company cost data in support of the initial inventory and inventory changes for pipeline construction used by the company in common carrier service.</td>
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<td>FERC-016A</td>
<td>Application for small producer exemption</td>
<td>Extension</td>
<td>Once, Two Filing</td>
<td>Required to</td>
<td>Independent Gas Producers</td>
<td>103</td>
<td>35</td>
<td>The data collected are used by the Commission to evaluate and process independent producer applications for the act of gas in interstate commerce under small producer exemption.</td>
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</table>
### Economic Regulatory Administration

**[ERA Docket No. 84–17–NG]**

**Natural Gas Imports; Southwest Natural Gas Corp.: Application To Import Canadian Natural Gas**

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Issuance of Opinion and Order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on December 18, 1984, the ERA Administrator issued an Opinion and Order approving Southwest Natural Gas Corporation's (Southwest) application to import Canadian natural gas from Dome Petroleum Limited. The approval authorizes Southwest to import at a price of $3.10 (U.S.) per MMBtu, up to 15 MMBtu per day, of Canadian natural gas on an interruptible, reasonable-efforts basis for a term of two years beginning on the date of first delivery and to continue thereafter on a year-to-year basis until terminated by either party or until a maximum of 8 Bcf has been imported.

The text of the Opinion and Order follows.

### FOR FURTHER INFORMATION CONTACT:


Issued in Washington, D.C., on December 19, 1984.

James W. Workman, Director, Office of Fuels Programs, Economic Regulatory Administration.

**DEPARTMENT OF ENERGY**

**Economic Regulatory Administration**


**I. Background**

On October 18, 1984, Southwest Gas Corporation (Southwest) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) pursuant to section 3 of the Natural Gas Act, for authorization to import up to 8 Bcf of Canadian natural gas in two volume segments over a two-year term from November 1, 1984, through October 31, 1986. The gas will be purchased from Dome Petroleum Limited (Dome) on an interruptible, “reasonable efforts” basis pursuant to gas purchase contracts signed October 11, 1984. The first or base volume segment provides for the purchase and import of a maximum of 5 MMBtu of natural gas per day and a total of 2 Bcf during the two-year period at a price of $3.10 (U.S.) per MMBtu, subject to adjustment on a quarterly basis to reflect changes in the market prices of competing energy sources in Southwest's service territory. The second volume segment provides for the purchase of up to 10 MMBtu per day and a total of 4 Bcf during the same period and at the same price, subject to the same quarterly adjustment.

Southwest provides gas at retail to residential, commercial, and industrial customers in certain areas of northern Nevada and the Lake Tahoe area of California, and in southern Nevada, southern California, and Arizona, and at wholesale for resale in parts of Nevada and California. Southwest purchases nearly all of its supply for its northern Nevada system from Northwest Pipeline Corporation (Northwest). Southwest intends to sell the base volume segment to small commercial and industrial customers whose energy requirements are presently being met by fuel oil or who are expected imminently to switch to fuel oil. Southwest intended to use the second volume segment of gas in its gas incentive sales program to regain or retain the loads of large commercial and industrial customers with dual-fuel capability, in the event that Northwest did not extend its Canadian incentive gas program beyond the October 1, 1984, termination of its Federal Energy Regulatory Commission (FERC) certificate, or offer an equivalent program or price thereafter. However, on October 31, 1984, the FERC allowed a reduced gas charge to be collected by Northwest which may offer an equivalent price to the industrial customers who otherwise would shift to residual fuel oil.*

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* See FERC Docket Nos. TAPS–2–27–CP, TAPS–2–27–01, and RP85–1–000. The FERC order allowed the proposed reduced commodity cost under Rate Schedule ODL-1, subject to refund. Northwest's FPA filing has been referred to a FERC Administrative Law Judge for hearing.
Northwest, currently a major supplier to Southwest for its northern Nevada system, does not request further procedures and does not oppose granting this authorization to Southwest except to the extent that sales under the proposed arrangement would displace sales Northwest would otherwise make to Southwest. Northwest contends that loss of sales to Southwest because of this proposed import would eliminate the contribution of such sales to Northwest's fixed costs and domestic take-or-pay liabilities, thereby increasing the overall cost of gas to Northwest's remaining customers. Northwest states it does not have sufficient information to accept Southwest's representation that the gas to be imported would not displace Northwest's sales to Southwest. Northwest asserts that it could deliver gas to Southwest at a lower cost than Southwest's total cost for the imported gas including the transportation charges. Northwest proposes to charge to transport the gas to Southwest.

Northwest currently a major supplier to Southwest for its northern Nevada system, does not request further procedures and does not oppose granting this authorization to Southwest except to the extent that sales under the proposed arrangement would displace sales Northwest would otherwise make to Southwest. Northwest contends that loss of sales to Southwest because of this proposed import would eliminate the contribution of such sales to Northwest's fixed costs and domestic take-or-pay liabilities, thereby increasing the overall cost of gas to Northwest's remaining customers. Northwest states it does not have sufficient information to accept Southwest's representation that the gas to be imported would not displace Northwest's sales to Southwest. Northwest asserts that it could deliver gas to Southwest at a lower cost than Southwest's total cost for the imported gas including the transportation charges. Northwest proposes to charge to transport the gas to Southwest.

Northwest's comments in this proceeding are identical to the comments it made on applications filed with the ERA by Northwest Natural Gas Company and Cascade Natural Gas Corporation. As we noted in our decisions in those proceedings, we interpret Northwest's comments to be a concern that gas purchased under this arrangement will compete with the gas it sells to Southwest. As the policy of this agency is to promote competition, we support Southwest's arrangement as representing new and positive competitive forces in the marketplace. After taking into consideration all the information in the record of this proceeding, I find that the authorization requested by Southwest is not inconsistent with the public interest and should be granted.5

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Southwest Gas Corporation (Southwest) is authorized to import up to 15 MMcf of Canadian natural gas per day during the two-year period beginning on the date of first delivery, and to continue thereafter on a year-to-year basis until terminated by either party, or until a maximum of 6 Bcf has been imported, whichever occurs first, in accordance with the provisions contained in the contracts submitted as part of the application.

B. Southwest shall notify the Federal Energy Regulatory Commission in writing of the date of first delivery of gas authorized in Ordering Paragraphs A within two weeks after deliveries begin.

C. Southwest shall file with the FERC the terms of any renegotiated price that may become effective after the initial quarterly period within two weeks of its effective date.

D. The motions for leave to intervene, as set forth in this Opinion and Order, are hereby granted, subject to such rules

4 See 49 FR 44127, November 2, 1984.

transactions have been reported to the Commission as being implemented pursuant to Part 284 or Part 157 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to §284.102 of the Commission's Regulations. A "C" indicates transportation by an interstate pipeline pursuant to §284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate increase is sought pursuant to §284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to §284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to §284.197(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to §284.103 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to §157.209 of the Commission's regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under §284.221 of the Commission's Regulations.

Kenneth F. Plumb, Secretary.

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<th>Recipient</th>
<th>Date Dtd</th>
<th>Subpart</th>
<th>Expiration date</th>
<th>Transportation rate (ff. Mill.)</th>
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<td>K N Energy, Inc.</td>
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* The filing of these docket numbers constitutes a determination of whether the filings comply with the Commission's Regulations.
* The proposed Resale Service Schedules contain revised rates and charges applicable to CP&L's three major customers, one private distribution utility, 18 rural electric cooperatives, and one partial requirement sale for-sale customers.

CP&L states that, under the rates currently in effect, it expects to realize a rate of return on equity during Period II (calendar year 1985) from service to its electric cooperative resale customers of 7.5%, from its municipals and private utility resale customers of 7.4%, and from the partial requirements customer of 6.8%. These rates of return on common equity are lower than the Company's cost rate for both long-term debt and preferred stock, and are clearly inadequate to compensate the common stockholders.

The revised rates for the Phase I increase are contained in proposed Resale Service Schedules RS85-1, RS85-2, and RS85-3 and accompanying resale fuel adjustment Rider No. 85A applicable to CP&L's electric cooperative customers, municipal and private distribution utility customers, and partial requirements customers, respectively. The revised rates for the Phase II rate increase are contained in proposed Resale Service Schedules RS85-1A, RS85-2A, and RS85-3A and accompanying resale fuel adjustment Rider No. 86B for CP&L's cooperative, municipal, and private, and partial requirements customers, respectively. CP&L proposes to place the revised tariff sheets for Phase I of the increase into effect as of February 24, 1984, and the revised tariff sheets for Phase II of the increase into effect as of February 21, 1984. The revised rates and charges for Phase I would increase revenues from jurisdictional sales by $22,000,000, if the rates were in effect for all of the 12-month period ending December 31, 1984. The revised rates and charges for Phase II would increase revenues an additional $31,543,012 during the same period, for a total revenue increase from the two phases of $33,543,012.

CP&L states that, under the rates currently in effect, it expects to realize a rate of return on equity during Period II (calendar year 1985) from service to its electric cooperative resale customers of 7.5%, from its municipals and private utility resale customers of 7.4%, and from the partial requirements customer of 6.8%. These rates of return on common equity are lower than the Company's cost rate for both long-term debt and preferred stock, and are clearly inadequate to compensate the common stockholders.

The revised rates and charges for Phase I would increase revenues from jurisdictional sales by $22,000,000, if the rates were in effect for all of the 12-month period ending December 31, 1984. The revised rates and charges for Phase II would increase revenues an additional $31,543,012 during the same period, for a total revenue increase from the two phases of $33,543,012.

It is stated that Commonwealth requests authority, to continue operation of its pipeline transmission system, including its mainline running from Greene County, Virginia, to the City of Norfolk, Virginia, two smaller lines running from Culpeper County, Virginia, to the City of Frederikburg and from the Town of Emporia, Virginia, to the City of Suffolk, Virginia, compressor stations and a 1,200,000 Mscf liquefied natural gas storage facility located in the City of Chesapeake, Virginia. It is explained that through these facilities Commonwealth services four sale for resale distributor customers serving over 250,000 end-users and one direct industrial customer. Commonwealth would also provide transportation service for on-system end-users under a new Rate Schedule T-1, which would not apply to resale customers. Commonwealth would also provide transportation service under a new Rate Schedule SNGT-1 for substitute natural gas (SNG) produced for its customers at Commonwealth's SNG Plant. It is asserted that the filing herein is required by the Commission in accordance with its August 20, 1984, order in Commonwealth Gas Pipeline Corporation, et al., Docket No. G-2500-000, revoking Commonwealth's Section 1(c) exemption from the Natural Gas Act and its October 15, 1984, order in the same proceeding granting rehearing and stay of the August 20, 1984 order, except for the requirement that the filing be made herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1985, 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 Commonwealth to appear or be represented at the hearing.

Kenneth F. Plumb, Secretary.

[FR Doc. 84-33876 Filed 12-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-150-000]

Equitable Gas Co., Application


Take notice that on December 4, 1984, Equitable Gas Company [Applicant], 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-150-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of up to 100,000 dth equivalent of natural gas per day on a best-efforts basis to New Jersey Natural Gas Company (New Jersey Natural) for resale until October 31, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that in accordance with a September 1, 1984, agreement between Applicant and New Jersey Natural (agreement), it proposes to sell gas to New Jersey Natural at a price lower than Applicant's current average system load factor rate. Applicant proposes that the price would be set at a level which would be competitive in the market place, but would not be less than Applicant's average weighted cost of gas. In this regard, Applicant requests a variance from the pricing provisions of the Commission's Policy Statement on Off-System Sales in Docket No. EL83-2-

Applicant states that Texas Eastern Transmission Corporation (TETCO) would transport the gas by displacement to New Jersey Natural. New Jersey Natural proposes to arrange and pay for the transportation by TETCO.

Applicant alleges that the gas to be sold is surplus to the requirements of Applicant's customers. Additionally, Applicant states that the proposed sale would enable Applicant to avoid some of the estimated $1,131,000 in minimum bill payments to TETCO for April through October of 1985. Applicant states that no construction would be necessary as delivery of the gas will be made by replacement through existing delivery points by TETCO.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1985, 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. 84-33877 Filed 12-28-84; 8:45 am]
BILLING CODE 6717-01-M
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. 84-33878 Filed 12-28-84; 8:45 am] BILLING CODE 6717-01-M

[Docket No. CP84-4-001]

Natural Gas Pipeline Co. of America; Petition To Amend


Take notice that on December 9, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP84-4-001 a petition to amend the order issued June 1, 1984, in Docket No. CP84-4-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the substitution of a turbine meter for an orifice meter at an interconnection between Natural and Central Illinois Light Company (CILCO) in Bureau County, Illinois, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order of June 1, 1984 (27 FERC ¶ 61,343), the Commission issued a certificate of public convenience and necessity authorizing Natural to construct and operate facilities interconnecting its pipeline system with a pipeline to be constructed by CILCO. Included in the authorized facilities was a 10-inch orifice meter. Natural states that upon further consideration it has concluded that an 8-inch turbine meter would provide greater range and better control of measurement than the authorized meter. According to Natural, the 10-inch orifice meter has not yet been constructed. Natural therefore requests that the order be amended to authorize the 8-inch turbine meter and related minor appurtenant facility changes. Natural states that this amendment would result in a minor reduction in construction costs, to a total of $147,000. As indicated in the order of June 1, 1984, Natural would finance the facilities from funds on hand, and CILCO has agreed to reimburse Natural for the cost of the facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 10, 1985, 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.T24 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. 84-33879 Filed 12-28-84; 8:45 am] BILLING CODE 6717-01-M

[Docket No. CP85-181-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application


Take notice that on December 14, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-181-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to its customers in accordance with the provisions of a Summer Service Rate Schedule, referred to as Rate Schedule IS-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to establish a rate schedule proposed to be effective for the limited period, April 27, 1985, to September 26, 1985 (summer season). It is stated that this rate schedule is designed to provide Applicant's customers an opportunity and incentive to increase their purchases of natural gas through existing facilities during the summer months when Applicant annually experiences reduced market requirements and associated excess gas deliverability. It is claimed that this rate schedule is designed to encourage off-peak use of natural gas to determine the market acceptance of an incentive summer rate and to provide actual market data for subsequent use in evaluating the feasibility of offering an incentive summer rate as a permanent part of Applicant's FERC Gas Tariff.

Applicant asserts that during the past decade it has experienced major changes in the make-up of its markets as well as a decline in its sales volumes. Applicant explains that during 1973 it sold approximately 875,000,000 Mcf of natural gas, 332,000,000 Mcf of which were sold in the summer season; whereas, in 1983, its annual sales were approximately 590,000,000 Mcf of natural gas, 148,000,000 Mcf of which were sold in the summer season. Thus, it is stated that the years 1973 to 1983, summer season sales decreased by 55 percent. Applicant further states its currently effective rates are based upon total system sales of 587,000,000 Mcf. During 1984 and 1985, however, Applicant expects to sell only 585,000,000 Mcf and 572,000,000 Mcf of natural gas, respectively.

Applicant asserts that in the late 1970's, national energy policies encouraged greater utilization of coal and the cost of natural gas exceeded the cost of coal, and that as a result, it has lost nearly all of the boiler fuel requirements of electric power generation plants (powerplants) to coal. By 1983, it is stated, the prices of natural gas and No. 6 fuel oil were comparable causing alternative fuel prices to be competitive with natural gas prices; the economic recession as well as conservation in the marketplace further impacted Applicant's sales. Applicant cites the decline in sales to ammonia plants and taconite plants as a specific illustration of the impact of these market forces. It is claimed that during 1973 Applicant sold approximately 29,000,000 Mcf of natural gas to ammonia plants and 48,000,000 Mcf of natural gas to taconite plants. Applicant estimates making savings in its generation supply to ammonia plants and taconite plants during 1984 at levels of 0 Mcf and 17,000,000 Mcf, respectively.

Losing the powerplant load, it is asserted, has had a double negative impact on Applicant. It is claimed that not only has Applicant experienced reduced sales, but also the nature and timing of these lost sales further compounded the unfavorable impact because powerplant load is basically a summertime, high load factor market. As these sales declined, it is explained, Applicant's summer deliverability surplus grew with respect to its annual load profile. Applicant maintains its winter peak requirements have remained at or near historical levels and that such a contrast in its load profile would present additional strain on the operation of its pipeline system making it more difficult to achieve a daily balance of its supply and market requirements.

Applicant states it has taken numerous steps at various levels to improve its competitive position in the
marketplace. Such steps are said to include:

(1) Obtaining Commission authority to make sales under two new discount rate schedules—Rate Schedule FPE and Rate Schedule LVCS. These rate schedules are said to provide Applicant rate flexibility to assist in the prevention of industrial customers switching to alternative fuels because of price competition.

(2) Stabilizing natural gas prices to assist Applicant in maintaining and managing sales. Applicant claims it has not increased its wholesale natural gas rates since October 27, 1982, and has passed several price decreases totaling nearly $30 million through to its customers. It is stated that on October 26, 1984, in Docket No. TAE5—3—59, Applicant filed for reduction in its rate of $14 million to be effective December 27, 1984, to reflect the net reduction in its 1985 cost of purchased gas and cost of transporting the Northern Border Pipeline System. It is hypothesized that such continued rate stability has contributed to the relative stabilization of Applicant's markets as experienced in 1983 and 1984.

(3) Renegotiating Applicant's two Canadian natural gas purchase contracts. Applicant maintains its amended contract with Northwest Alaskan Pipeline Company and Consolidated Natural Gas, Ltd., enables imported Canadian gas to be priced competitively with current domestic supplies purchased by Applicant. It is asserted the amended contracts would reduce the average unit price that Applicant pays for Canadian gas and would mean a $2 million reduction in Applicant's gas purchase costs when such contract amendments are approved by the appropriate regulatory agencies.

Applicant maintains that despite its marketing efforts, its system load profile still is characterized by peak periods of demand in the winter months and low periods of demand in the summer months and that in 1982 and 1983 it experienced peak day sales of 4,000,000 Mcf compared to average daily summer season sales of 1,000,000 Mcf. Applicant states that so far its 1984 peak day sales are 3,000,000 Mcf compared to average daily summer sales of 800,000 Mcf. Applicant believes that new and innovative marketing tools are required to balance effectively these fluctuations on its system, thus enabling it to achieve a more stable load profile.

Applicant proposes a five-month sales program designed to provide its customers an opportunity and incentive to increase their purchases of natural gas during the summer months at a discounted rate. It is explained that this rate schedule would be utilized to determine the market responsiveness and acceptance of an incentive summer season rate. Applicant's customers would use the gas purchased under Rate Schedule IS—1 for their general system supply or for other purposes. Service under this Rate Schedule would be available up to the utility customer's respective daily firm entitlement and, in excess of such entitlement, subject to existing operating conditions and Applicant's sole judgment, it is stated. It is further stated that the gas sold under the incentive summer rate schedule would be delivered at existing delivery points, and no new facilities would be required.

Applicant asserts sales made under this rate schedule would materially benefit its customers both directly and indirectly. It is claimed each customer would be entitled to a discount for volumes of gas purchased above a certain percentage of monthly base quantity and that the discount would be derived solely from a voluntary reduction in Applicant's approved and currently effective non-gas cost sales margin. It is asserted that since Rate Schedule IS—1 would result in sales which would not otherwise be made, the system in general would receive the salutary effects of contributing to the recovery of the overall costs underlying Applicant's currently effective sales rates, assisting in reducing Applicant's current deliverability surplus, and reducing Applicant's deficiency payment exposure.

Applicant asserts that its currently effective rates are based upon total system sales of 572,000,000 Mcf and that its sales have deteriorated from this level. It is currently estimated that such sales would be 572,000,000 Mcf during 1983. Sales at the 572,000,000 Mcf level for 1985 would not enable Applicant to recover the fixed costs underlying its currently effective rates, it is claimed. It is further stated that the proposed rate schedule would provide Applicant an opportunity to recover its fixed costs and to assist it in maintaining stable rates and halting further sales loss and market erosion.

Applicant explains that over the past several years, it has experienced a gas deliverability surplus and that such deliverability surplus is computed to be in existence throughout the proposed term of this service. Sales under this rate schedule would assist Applicant's efforts to effectively manage its gas deliverability surplus, it is stated.

Applicant claims it continues to be exposed to substantial deficiency payments; it estimates deficiency payment exposure for calendar year 1935 to be approximately $120 million. Sales made under the proposed rate schedule would assist Applicant in managing its deficiency payment exposure, it is maintained.

Applicant states that Rate Schedule IS—1, proposed to be included in Volume 1 of Applicant's FERC Gas Tariff, would be available to those distribution and pipeline customers who purchase natural gas from Applicant pursuant to Rate Schedules CD—1, CDO—1, and PL—1. It is further stated that Rate Schedule IS—1, proposed to be included in Volume 2 of Applicant's FERC Gas Tariff, would be available to any customer which purchases natural gas from Applicant pursuant to any effective sales rate schedule under Volume 2 of Applicant's FERC Gas Tariff.

Applicant states Rate Schedule IS—1 would be available to those qualifying customers which purchase quantities of natural gas in excess of specified monthly base levels; Rate Schedule IS—1 would only apply to incremental sales in excess of the specified monthly base quantities.

It is stated all volumes sold under Rate Schedule IS—1 to eligible customers under Volume 1 of Applicant's FERC Gas Tariff would be sold at a rate reflecting a 28.32-cent per Mcf discount in Applicant's currently effective CD—1, CDO—1, or PL—1 commodity rate, whichever is applicable, for the zone in which the gas is sold. It is explained that volumes sold under Rate Schedule IS—1 to customers identified in Volume 2 of Applicant's FERC Gas Tariff would be at a rate reflecting a 16.83-cent per Mcf discount on Applicant's currently applicable rate. It is asserted the 28.32-cent per Mcf and 16.83-cent per Mcf rate discounts are equal to the return on common equity and related tax components underlying Applicant's currently effective rates. Consequently, Applicant states that it still would be recovering the operating expenses and debt costs related to sales made pursuant to this new rate schedule.

Applicant states the monthly base quantities would be established as follows and reflect Applicant's efforts to determine the best method of estimating sales which would be made absent the utilization of this proposed rate schedule:

For each Rate Schedule CD—1 and CDO—1 customer purchasing natural gas under Rate Schedules CD—1 and CDO—1, the monthly base quantity would be the higher of the corresponding month's purchases in the years 1933 and 1984 by billing group.

For all new customers purchasing natural gas under Applicant's Rate Schedules CD—1 and CDO—1 for whom Applicant is unable to
establish a monthly base quantity using the above methodology, the monthly base quantity would be equal to the 100 percent load factor equivalent. However, if the new customer is able to establish a monthly base quantity utilizing the same methodology as used in the establishment of a monthly base quantity for existing customers, then such methodology would be utilized in such instance.

For each Rate Schedule PL-1 customer purchasing natural gas under Applicant's Rate Schedule PL-1, the monthly base quantity would be equal to the respective customer's monthly minimum bill volumes as set forth in Volume 1 of Applicant's FERC Gas Tariff.

For all customers, excluding minimum bill customers, purchasing natural gas under Volume 2 of Applicant's FERC Gas Tariff, the monthly base quantity would be the higher of the corresponding month's purchases in the years 1983 and 1984. For those customers whose rate schedule contains a minimum provision, the monthly base quantity would be equivalent to the monthly minimum bill volume as detailed in their respective rate schedule contained in Volume 2 of Applicant's FERC Gas Tariff.

For all customers under Volume 2 of Applicant's FERC Gas Tariff for whom Applicant is unable to establish a monthly base quantity utilizing the above methodologies, the monthly base quantity would be equal to the 100 percent load factor equivalent.

It is stated any incremental volumes purchased in excess of these established monthly base quantities would be priced at the applicable reduced rate. It is claimed these monthly base quantities were established to eliminate or minimize the possibility of discounting sales that would otherwise have been made at existing rates. Applicant asserts that given the existing stable rate environment over the past two years, there is nothing to indicate that any sales would exceed the established base level, absent the rate incentive proposed herein.

Applicant proposes to retain all revenues from this program to assist in recovering the costs underlying its currently effective rates. Applicant proposes a voluntary reduction in its non-gas margin to make these sales. It is claimed the rate reduction would be entirely attributable to its foregoing the rate component associated with return on common equity and related taxes. Applicant contends that without any return component underlying the proposed incentive summer rate, it is only equitable and reasonable to allow it to retain the remaining cost recovery underlying such sales.

Applicant submits that this proposed Rate Schedule IS-1 is in the public interest for the following reasons:

(1) The proposed incentive summer rate schedule would provide all of Applicant's customers with the opportunity to purchase natural gas at a lower cost for their system supply, thereby reducing their cost of gas to their customers, which include residential as well as industrial customers.

(2) Rate Schedule IS-1 sales would be incremental sales that Applicant would not otherwise make under its regular firm sales rate schedule. Applicant's customers, in turn, would also have made additional sales and would increase their recovery of costs.

(3) All customers would benefit from Rate Schedule IS-1 to the extent that Applicant's exposure to deficiency payments would be reduced.

(4) The proposed rate schedule would provide Applicant with an opportunity to send signals to its gas suppliers of a more stable load profile which in turn would assist the producer in more stable gas production of his wells. Further, such signals would assist Applicant in its efforts to negotiate for low cost supplies of natural gas for its customers.

(5) The proposed rate schedule would (a) assist in maintaining the economic viability of Applicant's pipeline (b) promote further stability by preventing erosion of Applicant's sales base, (c) improve the operation characteristics of Applicant's pipeline and (d) assist in the recovery of costs on Applicant's system underlying its currently effective sales rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1985, 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, 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. 84-33880 Filed 12-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-139-000]

Panhandle Eastern Pipe Line Co.;
Request Under Blanket Authorization


Take notice that on November 30, 1984, Panhandle Eastern Pipe Line Company (PEPL), P.O. Box 1642, Houston, Texas 77001, filed a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a qualified end-user under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, as all more fully set forth in the request which is on file with the Commission and open to public inspection.

PEPL states that the proposed transportation service would be performed pursuant to a transportation agreement dated September 7, 1994, as amended September 28, 1984, and October 18, 1984, (Agreement) among PEPL, Battle Creek Gas Company (Battle Creek) and Kellogg Company (Kellogg). It is explained that the Agreement provides for the transportation of up to 6,000 Mcf of natural gas per day (Mcf/d) at a rate of 42 cents, plus 1.24 cents GRI surcharge for each MM/MBtu transported on behalf of Kellogg for use as boiler fuel.

PEPL states that the agreement provides for PEPL to receive a transportation service quantity of up to 6,000 Mcf/d on an interruptible basis, at an existing point of interconnection between PEPL and Producing Gas Company (Seller) in Custer County, Oklahoma, and for the transportation and delivery of such gas to the suction side of the Freedom compressor station. It is explained that the gas is then compressed by Michigan Gas Storage.
Company [Gas Storage] and redelivered to PEPL on the discharge side of the Freedom compressor station. PEPL states it would then transport and redeliver such gas, less a four percent reduction for fuel to Battle Creek [at existing points of interconnection in Calhoun County, Michigan] which in turn would make ultimate delivery to Kellogg for its end-use at its Battle Creek Plant. It is explained that Battle Creek is a local distribution company and an existing jurisdictional customer of PEPL and that Kellogg is an end-use customer of Battle Creek.

PEPL also requests "flexible authority" to add or delete sources of supply or receipt/delivery points.

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. 84-33881 Filed 12-28-84: 8:45 am]

BILLING CODE 6717-01-M

Docket No. ID-2145-600

Robert H. Wellington; Application

December 24, 1984.

The filing individual submits the following:

Take notice that on December 14, 1984, Robert H. Wellington filed an application pursuant to section 205(b) of the Federal Power Act to hold the following positions:

Director: Centel Corporation
Director: Banco di Roma (Chicago)

"Bank"

Applicant states that Bank's foreign parent and its subsidiaries are authorized to and have participated in the marketing or underwriting of securities of a public utility in the overseas Eurobond market. Bank is not so authorized. However, to the extent necessary, applicant seeks authorization to continue to hold the designated positions in both companies.

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, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1985. Protestants will be considered in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing. Kenneth F. Plumb, Secretary.

[FR Doc. 84-33882 Filed 12-23-84: 6:45 am]

BILLING CODE 6717-01-M

<table>
<thead>
<tr>
<th>Docket No. and date filed</th>
<th>Applicant</th>
<th>Purchase and location</th>
<th>Price per 1,000 cf</th>
<th>Pressure class</th>
</tr>
</thead>
<tbody>
<tr>
<td>G-5004-401 D Dec. 10, 1984</td>
<td>Shell Western E&amp;P Inc., P.O. Box 4524, Houston, Texas 77210</td>
<td>Texas Eastern Transmission Corporation, President City of, Laredo and Goodfellow County, Texas; Northern Natural Gas Company, Houston Field, Brazos and Stonewall Counties, Kansas</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>G-5716-021 D Dec. 6, 1984</td>
<td>Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700 Houston, Texas 77006</td>
<td>Southern Natural Gas Company, Houston Field, Brazos and Stonewall counties, Kansas</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>G-5716-022 D Dec. 6, 1984</td>
<td>do</td>
<td>Northern Natural Gas Company, Houston Field, Brazos and Stonewall counties, Kansas</td>
<td>(1)</td>
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<tr>
<td>G-7462-010 D Dec. 10, 1984</td>
<td>do</td>
<td>Northern Natural Gas Company, Houston Field, Brazos and Stonewall counties, Kansas</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>G-7463-005 D Dec. 10, 1984</td>
<td>do</td>
<td>Northern Natural Gas Company, Houston Field, Brazos and Stonewall counties, Kansas</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>G-13125-000 D Dec. 5, 1984</td>
<td>ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, P.O. Box 2319, Dallas, Texas 75221</td>
<td>Northern Natural Gas Company, Houston Field, Brazos and Stonewall Counties, Kansas</td>
<td>(1)</td>
<td>(1)</td>
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<td>G-20224-002 D Nov. 26, 1984</td>
<td>Shell Western E&amp;P Inc</td>
<td>Natural Gas Field, Company, Houston Field, Texas County, Oklahoma</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>C511-1643-001 D Nov. 23, 1984</td>
<td>Energy Resources Group, Inc. (Operator), et al., P.O. Box 1201 Wilkes, Kansas 67201</td>
<td>Kansas City Gas Company, Kansas City, N.W. Field, Woodward County, Oklahoma</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>C528-41-000 D Mar. 22, 1982</td>
<td>CNG Service Company, Kansas City, Kansas</td>
<td>Kansas City Gas Company, Kansas City, N.W. Field, Woodward County, Oklahoma</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>C69-82-000 D Nov. 29, 1984</td>
<td>Conoco Inc., P.O. Box 2197, Houston, Texas 77252</td>
<td>Transco Gas Pipeline Company, East Cameron 60, Cameron Louisiana</td>
<td>(1)</td>
<td>(1)</td>
</tr>
</tbody>
</table>
Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 8, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing thereon must file petitions to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb, Secretary.
Southern California Gas Co.; Application for Exemption

December 21, 1984

Take notice that on December 16, 1984, South Carolina Electric and Gas Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue not more than $180 million of unsecured promissory notes to be issued on or before December 31, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC, 20826, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 84-33885 Filed 12-28-84; 8:45 am]
BILLING CODE 4717-01-M

Docket No. ES85-23-000

South Carolina Electric and Gas Co., Application

Southern California Gas Co.; Petition for Exemption

Issued December 29, 1984.

On November 19, 1984, Southern California Gas Company (SoCal Gas) filed a petition with the Federal Energy Regulatory Commission (Commission) seeking an exemption from the Commission's incremental pricers rules with regard to gas sales under SoCal Gas Rate Schedule No. GN-7, applicable to natural gas service for enhanced oil recovery (EOR) customers. The petition is filed under section 205(d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3346(d) and 18 CFR 282.205.

SoCal Gas asserts that it may be able to increase its sales to EOR customers by 330,000 Dth per day at rates that will provide a meaningful contribution to system-wide fixed costs and thus more to the benefit of its high priority customers. SoCal Gas also asserts that such increased sales may alleviate its minimum bill liability, reduce the take or pay exposure of its pipeline suppliers, result in increased production of domestic oil (reducing reliance on imported oil) and decrease air pollution caused by EOR customers burning crude oil in lieu of natural gas. However, SoCal Gas asserts that it cannot attract new EOR customers who presently burn crude oil to generate steam for use in enhancing oil production if it is required to charge for natural gas under the Commission's incremental price regulations.

Without the requested exemption, SoCal Gas asserts that it will be unable to increase its sales to EOR customers and realize the enumerated benefits.

SoCal Gas claims that failure to realize these benefits for lack of pricers flexibility will impose undue hardship, inequity and an unfair distribution of burdens on SoCal Gas and its ratepayers.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure, 18 CFR 385.101-385.1117 (1993). Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with Rule 1103 of the Commission's Rules of Practice and Procedure. All petitions to intervene must be filed within fifteen days after the publication of this notice in the Federal Register.

Kenneth F. Plumb, Secretary.

[FR Doc. 84-33885 Filed 12-28-84; 8:45 am]
BILLING CODE 4717-01-M
Comments on all parts of this notice should be sent to:  
Nanette Liepman (PM-223), U.S.  
Environmental Protection Agency,  
Office of Standards and Regulations,  
Regulation & Information  
Management Division, 401 M Street,  
SW., Washington, D.C. 20460  
and  
Carlos Tellez, Office of Management  
and Budget, Office of Information and  
Regulatory Affairs, New Executive  
Office Building (Room 3223), 729  
Jackson Place, NW, Washington, D.C.  
20503  


David Schwartz,  
Acting Director, Regulation and Information,  
Management Division.  

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB’s public docket files once approved may be requested from the agency clearance officer, whose name appears below.  


Proposal To Approve, Under OMB Delegated Authority, the Extension Without Revision of the Following Reports.  

1. Report title: Notification pursuant to § 211.23(h) of Regulation K on acquisitions made by foreign banking organizations.  

Agency form number: FR 4002.  
OMB Docket number: 7100-0110.  
Frequency: On occasion.  
Reporters: Foreign banking organizations.  
Small businesses are not affected.  

General description of report: This information collection is mandatory [12 U.S.C. 1644 and 3106] and confidential treatment may be requested.  

Foreign banking organizations (FBOs) must inform the Board of shares acquired in companies engaged in activities in the U.S. and of direct and indirect U.S. activities commenced by a subsidiary of the FBO.  

2. Report title: Statement Regarding Security Devices that do not meet the Minimum Requirements of Regulation P.  

Agency form number: FR 4003.  
OMB Docket number: 7100-0112.  
Frequency: On occasion.  
Reporters: State member banks.  
Small businesses are affected.
General description of report: This recordkeeping requirement is mandatory [12 U.S.C. § 1882(b)]; no confidentiality issues arise since the information is maintained in the files of the state member banks. Any state member bank not meeting the minimum standards for security devices, as outlined in Regulation P, must maintain in its files a record outlining the reasons for not meeting the standards.

3. Report title: Written Security Program for State Member Banks as Required by Regulation P.
   - Agency form number: FR 4004. OMB Docket number: 7100-0112.
   - Frequency: One-time.
   - Reporters: State member banks.
   - Small businesses are affected.

   General description of report: This recordkeeping requirement is mandatory [12 U.S.C. § 1882(b)]; no confidentiality issues arise because the records are maintained in the files of the state member banks.

   All state member banks must maintain in their files a written security program outlining procedures to deter external crime and to assist in the apprehension of persons who commit these crimes.

   - Agency form number: FR 4005.
   - OMB Docket number: 7100-0112.
   - Frequency: Annually.
   - Reporters: State member banks.
   - Small businesses are affected.


   State member banks are required by the Federal Reserve Board to file with the appropriate Federal Reserve Bank an annual statement of compliance with Regulation P.

   - Agency form number: FR U-1.
   - OMB Docket number: 7100-0115.
   - Frequency: Recordkeeping requirement.
   - Reporters: Commercial banks.
   - Small businesses are affected.

   General description of report: This information collection is mandatory [15 U.S.C. 78g; 78j]; a pledge of confidentiality is not applicable.

   A purpose statement is required to be completed by a bank and borrower whenever credit is secured by margin stock. It is used to determine the purpose of the loan proceeds, serve as an evidentiary tool to ascertain the intention of the parties involved, and document the securities serving as collateral.

California Commercial Bancshares; Acquisition of Company Engaged In Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) for the Board's approval under section 4(e)(6) of the Bank Holding Company Act (12 U.S.C. 1846(c)(6)] and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1985.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

1. California Commercial Bancshares, Santa Ana, California; to acquire certain assets and assume certain liabilities of Mission Hills Mortgage Corporation, Tustin, California, thereby engaging in mortgage banking activities, including the origination, selling and servicing of real estate secured loans, from offices located in Upland, Riverside and Concord, California; Albuquerque, New Mexico; and Phoenix, Arizona.


   James McAfee, Associate Secretary of the Board.

   [FR Doc. 84-33825 Filed 12-28-84; 8:45 am]

   BILLING CODE 6710-01-M

Citizens Financial Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.20(a)(2) of Regulation Y (49 FR 791) for the Board's approval under section 4(c)(6) of the Bank Holding Company Act (12 U.S.C. 1846(c)(6)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

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 Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02108:

1. Citizens Financial Group, Inc., Providence, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Corporation, Providence, Rhode Island, thereby indirectly acquiring Citizens Trust Company, Providence, Rhode Island. Citizens Financial Group, Inc. has also applied to acquire Citizens Savings Bank, F.S.B., Providence, Rhode Island, thereby engaging in activities permissible for a federal stock savings bank in Rhode Island, including real estate development on a limited basis; and to acquire indirectly the voting shares of MARLA, Inc., Atlanta, Georgia; thereby engaging in the origination, sale and servicing of mortgage loans and other consumer finance loans, and credit-related insurance agency activities. These activities would be performed from the Atlanta, Georgia offices of Applicant's subsidiary in the State of Georgia.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, NW, Atlanta, Georgia 30303:

1. Dooly Bancshares, Inc., Vienna, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Dooly, Vienna, Georgia.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 18, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. Dooly Bancshares, Inc., Vienna, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Dooly, Vienna, Georgia.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. First Commerce Bancorp, Inc., Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of First National Commerce Bank, Phoenix, Arizona (in organization).


James McAfee, Associate Secretary of the Board.

[F.R. Doc. 84-38328 Filed 12-28-84; 8:45 am]
BILLING CODE 6210-01-M

Dooly Bancshares, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have filed an application under section 23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(6) of the Bank Holding Company Act (12 U.S.C. 1843(c)(6)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire directly or through a subsidiary, a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 January 18, 1985.

Key Banks, Inc., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under section 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(6) of the Bank Holding Company Act (12 U.S.C. 1843(c)(6)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Selecting specific questions to be included in an application for a de novo activity.

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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10048:

1. Key Banks Inc., Albany, New York; to engage de novo through its subsidiaries, Key Financial Services Inc., Albany, New York, in making, acquiring, or servicing, for its own account or for the account of others, leases, loans and other extensions of credit, including but not limited to, leases, loans and other extensions of credit to finance the purchase or other acquisition of aircraft and boats.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Cobanco, Inc., Santa Cruz, California; to engage de novo through a proposed data processing company in providing data processing services including transmitting and providing data of a financial and economic nature regarding automated payroll, accounts receivable, accounts payable, general ledger processing and other automated services.

2. New City Bancorp, Orange, California; to engage de novo through its subsidiary, New City Financial Thrift & Loan Association, Anaheim, California, in the operation of an industrial loan company including purchasing dealer paper connected with consumer transactions, commercial loans, inventory financing, accounts receivable financing, and loans for business expansion and investment certificates. These activities would be performed in the State of California.
Board of Governors of the Federal Reserve System, December 23, 1934.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-33820 Filed 12-28-84; 8:45 am]
BILLING CODE 6100-01-M

Mid-Atlantic Bankcorp, 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. Stating 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 January 18, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Mid-Atlantic Bankcorp, Hagerstown, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Hagerstown Trust Company, Hagerstown, Maryland.

2. Raleigh Bankshares, Inc., Beckley, West Virginia; to acquire 100 percent of the voting shares of National Bank of Summers, Hinton, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. First Holding Company, Livingston, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Livingston, Livingston, Tennessee.

2. Federal Reserve Bank of St. Louis (Delmer P. Weiss, Vice President) 411 Locust Street, St. Louis, Missouri 63101:

1. AMC Bancorp, Inc., Modesto, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Bank of Modesto, Modesto, Illinois.

Board of Governors of the Federal Reserve System, December 23, 1934.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-33820 Filed 12-28-84; 8:45 am]
BILLING CODE 6100-01-M

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on November 21, 1984, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $4 billion to $6 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately for the period ending with the close of business on December 18, 1984. Subsequently, effective December 5, 1984, the limit was raised an additional $2 billion to $8 billion for the period ending with the close of business on December 18, 1984.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697.


Stephen H. Axilrod,
Secretary.

[FR Doc. 84-33820 Filed 12-28-84; 8:45 am]
BILLING CODE 6100-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

January Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix II), announcement is made of the following national advisory bodies scheduled to assemble during the month of January 1985.

Rape Prevention and Control Advisory Committee

January 17-18; 9:00 a.m., Parklawn Building Conference Rooms I and B, 5600 Fishers Lane, Rockville, Maryland 20857
Open—January 17-18

Contact: Ann Maney, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, 5600 Fishers Lane, Room 6C12, Rockville, Maryland 20857, (301) 443-1910

Purpose: The Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Mental Health, through the National Center for the Prevention and Control of Rape (NCPCR), on matters regarding the needs and concerns associated with rape in the United States, and makes recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include discussions of the role of the Advisory Committee, victim assistance research activities of the NCPCR, and program enhancements designed to address research gaps.

Mental Health Small Grant Review Committee

January 17-17; 1:30 p.m., The Georgetown Hotel, 2121 P Street, NW, Washington, D.C. 20037
Open—January 17; 1:30–2:30 p.m.
Closed—Otherwise

Contact: Ms. Virginia Harter, Room 9–85, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4613

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Agenda: On January 17, from 1:30–2:30 p.m., the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will perform initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).
National Advisory Council on Drug Abuse

January 22-23; 9:00 a.m., National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20820
Open—January 22; 9:00 a.m.—12 noon and January 23; 9:00 a.m.—5:00 p.m.
Closed—January 22; 1:30-5:00 p.m.
Contact: Ms. Sheila Gardner, Parklawn Building, Room 10A-37, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6720

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: On January 22, from 9:00 a.m.—12 noon, and on January 23, from 9:00 a.m.—5:00 p.m., the meeting will be open for discussion of administrative announcements, program developments, and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

National Advisory Council on Alcohol Abuse and Alcoholism

January 31—February 1; 10:30 a.m., National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland 20820
Open—January 31; 10:30 a.m.—5:00 p.m.
Closed—Otherwise
Contact: Mr. James Vaughan, Parklawn Building, Room 16C20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6375

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: On January 31, from 10:30 a.m.—5:00 p.m., the open session will be devoted to the opening session and the discussion of current budget, legislative, and program activities. On February 1, from 9:00 a.m. to adjournment the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3275. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Sue Simons,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84-33792 Filed 12-28-84; 8:45 am] BILLING CODE 4160-20-M

Centers for Disease Control

Cooperative Agreement for a Demonstration Program in the Use of Calcium Fluoride in Fluoridating a Water System Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for a Cooperative Agreement for a Demonstration Program in the Use of Calcium Fluoride in Fluoridating a Water System, Catalog of Federal Domestic Assistance Number 13.283. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Any State agency, public agency, political subdivision, university, or private industry is eligible to apply for this cooperative agreement.

Purpose and Cooperative Activities

A. Purpose

The purpose of this cooperative agreement is to provide collaborative and technical support for a State or local (city or county) health department, university, or private industry to conduct a study where calcium fluoride is used to fluoridate water systems. This project will determine if quality and/or cost benefits can be improved regarding fluoridation of public water systems and will determine the basic engineering design criteria for the use of calcium fluoride in the United States.

B. Cooperative Activities

1. Recipient Activities:

a. The recipient will design, conduct, and evaluate a project intended to:

i. Determine the size of calcium fluoride particles needed for the most effective water fluoridation results.

ii. Determine how long beds of calcium fluoride last in a fluoridation system.

(b) Determine if a consistent level of fluoride can be maintained.

(c) Determine the cost savings of using calcium fluoride over the conventional fluoride chemicals (sodium fluoride, sodium silicofluoride, and hydrofluosilicic acid).

b. Develop a small-scale operating model to evaluate the feasibility of using calcium fluoride as a fluoridation chemical in the United States.

c. Develop detailed engineering design criteria from data collected through operation of the small-scale model.

d. Develop a full-scale fluoridation system to test and evaluate the detailed engineering design criteria.

e. Develop from the full-scale fluoridation system the final engineering design criteria, including evaluation of the feasibility for use of calcium fluoride, for use in other areas of the United States.

f. Develop information which includes the results and implications of the demonstration project for use by various State and local governments, private institutions, and individuals.

2. CDC Activities:

a. Collaborate in developing the overall project design.

b. Collaborate in the development and evaluation of a small-scale operating fluoridation system when calcium fluoride is used to fluoridate the system.

c. Collaborate in the development of the engineering design criteria for a small-scale model.

d. Collaborate in the development of the full-scale fluoridation system.

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Announcement: Federal Register Vol. 49, No. 252 / Monday, December 31, 1984 / Notices
Does the proposal clearly define the technical problems and demonstrate approach to conducting the project?

Does the proposal include a realistic proposed schedule (with time frames) for accomplishing the tasks described in the recipient's activities?

Does the proposal include the number, types, and training and experience of the personnel who will supervise, coordinate, and operate the calcium fluoride project?

Does the applicant identify the personnel and their capabilities assigned to accomplish specific tasks of the project, and are the facilities, the necessary equipment and the appurtenances, and the support staff available identified?

Does the applicant describe plans for publishing results in scientific publications?

Approximately $85,000 will be available during Fiscal Year 1985 to support this cooperative agreement. It is anticipated that the cooperative agreement will be funded for 12 months with a 3-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Applications for a cooperative agreement must include a narrative which:

1. Briefly describes the applicant's understanding of the problem and the purpose of the cooperative agreement.

2. Provides details of how the applicant will conduct the project.

3. Documents the capability to provide the staff and resources to perform their part of the project and describes the approach to be used in carrying out their responsibilities.

4. Provides proposed schedule (with time frames) for accomplishing the activities of this cooperative agreement.

5. Specifies how the project will be administered.

6. Identifies and provides the qualifications and time allocations of the staff assigned to this project, and the facilities, capabilities, office space, necessary equipment, and support staff available for the performance of this project.

7. Describes plans for publishing results in scientific publications.

8. Proposes will be reviewed and evaluated based on the following criteria:

   a. Does the applicant demonstrate an understanding of the problem and the purpose of the cooperative agreement? Specifically, does the applicant indicate some knowledge of how the cooperative agreement is used and the responsibilities of each party?

   b. Does the applicant define the approach to conducting the project? Does the proposal clearly define the technical problems and demonstrate realistic approaches to their solution? Primary consideration in evaluating the proposal will be clarity, realism, and practicality of developing the pilot projects, obtaining the engineering design data, and evaluating the feasibility of using calcium fluoride in community water systems in the United States.

   c. Collaborate and assist in evaluating the full-scale fluoridation system and the engineering design criteria, and also assist in evaluating the feasibility of using calcium fluoride in community water systems in the United States.

   d. Collaborate on the preparation, presentation, and publication of program findings.

   e. Collaborate and assist in evaluating the full-scale fluoridation system and the engineering design criteria, and also assist in evaluating the feasibility of using calcium fluoride in community water systems in the United States.

   f. Collaborate on the preparation, presentation, and publication of program findings.

Progress reports will be submitted on a quarterly basis. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Funding estimates outlined above may vary and are subject to change.
Atlanta district office, chaired by John Turner, Director. The topics to be discussed are Women’s Health Issues and Switch of Prescription Drugs to Over-the-Counter (OTC) Status.

DATE: Friday, January 18, 1985, 10 a.m. to 12 m.

ADDRESS: Columbus Extension Service Conference Room, Columbus Government Center, Tower Room, Columbus, GA 31993.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 1010 West Peachtree St. NW, Atlanta, GA 30309, 404-681-7355.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA’s District Offices, and to contribute to the agency’s policymaking decisions on vital issues.


Joseph P. Hills, Associate Commissioner for Regulatory Affairs.

[Docket No. 81N-0080]

Wyeth Laboratories; Mepergan Fortis Capsules; Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to refuse approval of the supplemental new drug application for Mepergan Fortis Capsules. The drug is intended for sedation and relief of moderate pain in postoperative patients, postpartum patients, and patients with pain associated with malignancies.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than January 30, 1985. Disclosure of data and information and submission of narrative statement by FDA’s Center for Drugs and Biologics by March 29, 1985, and by other participants by April 29, 1985. Prehearing conference on May 22, 1985, at 10:00 a.m.

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857 (Submissions should be identified with docket number 81N-0080 and clearly labeled “Mepergan Fortis Hearing.”) Prehearing conference in the FDA Hearing Room, Rm. AA–35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: In a notice (DES1 7337) published in the Federal Register of April 20, 1972 ([7 FR 7827]), the Food and Drug Administration (FDA) evaluated the effectiveness of certain prescription drug products for use in the relief of pain. Included in this notice were Mepergan Fortis Capsules containing meperidine hydrochloride, 50 milligrams (mg), and promethazine hydrochloride, 25 mg, manufactured by Wyeth Laboratories ("Wyeth"), Division of American Home Products Corp., P.O. Box 8398, Philadelphia, PA 19101. The 1972 notice, part of the Drug Efficacy Study Implementation (DES1) program, stated that FDA had evaluated reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, together with other available evidence, and had concluded, among other things, that Mepergan Fortis was "possibly effective for moderate to moderately severe pain." The notice also stated that no new drug application (NDA) had been approved or deemed approved for Mepergan Fortis Capsules.

Responding to the 1972, Wyeth submitted a supplement to its approved NDA 11–730 (Mepergan Injection) to provide for Mepergan Fortis Capsules. After reviewing Wyeth’s submission, the Director of the Bureau of Drugs (now the Center for Drugs and Biologics), in a notice published in the Federal Register on September 18, 1981 ([46 FR 46404]), concluded that he was unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience to evaluate the effectiveness of Mepergan Fortis Capsules. Accordingly, the Director proposed to refuse approval of the supplemental NDA because of a lack of substantial evidence that the drug product has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.


The Commissioner is now granting Wyeth’s hearing request on the proposal to refuse approval of the supplemental NDA for Mepergan Fortis. Approval of this supplemental NDA will be refused unless there exists substantial evidence that Mepergan Fortis has the clinical effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling ([21 U.S.C. 355(d), 21 CFR 314.111(a)(5)]. In addition, because Mepergan Fortis is a fixed-combination prescription drug, such evidence exists only if "each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug" ([21 CFR 300.50(a)(5)]. Accordingly, there are two questions to be addressed in this proceeding with respect to Mepergan Fortis:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug and

2. Whether, on the basis of any such adequate and well-controlled investigations that exist, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that the drug product in question satisfies the combination policy in 21 CFR 300.50 and will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof ([21 U.S.C. 355(d)].

The parties to the hearing will be FDA’s Center for Drugs and Biologics and Wyeth. The presiding officer will be Administrative Law Judge Daniel J. Davidson. In addition to the above-identified parties, any other interested person shall be permitted to participate as a nonparty participant (see 21 CFR 12.89), provided that each such person files a notice of participation pursuant to 21 CFR 12.45(a).

Under 21 CFR 12.85, FDA’s Center for Drugs and Biologics would normally file with the Dockets Management Branch a narrative statement setting forth its position on the issues for hearing and a summary of the types of evidence to be introduced in support of its position
the hearing, together with copies of data and information contained in the Center's files that relate to the issues raised heretofore, at the time when this notice issues. I am, under 21 CFR 10.20(j), modifying that requirement to the extent that the Center will be granted until March 29, 1985, to make these submissions. I have concluded that this modification of this regulation in the context of this proceeding does not prejudice any participant in the hearing, serves the ends of justice, is in accordance with law, and thus is authorized under 21 CFR 10.19. The modification allows the FDA to advise the parties that a hearing is pending on this matter prior to the completion by the Center of the sometimes lengthy process of complying with the requirements of § 12.85.

Interested persons may obtain a copy of the Center's narrative statement, after it is filed from the Dockets Management Branch at the address given above. Such persons may also examine the data and information relating to Mepergan Fortis (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

The prehearing conference will be held at 10:00 a.m. on May 22, 1985, in the FDA Hearing Room, Rm. 4A-35, 5000 Fisher Lane, Rockville, MD 20857. All participants are required to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92. The date and time of the prehearing conference may be subject to change by Order of the presiding officer. Hearing participants will be notified of any such change. Others may wish to confirm the schedule for the prehearing conference by telephoning the contact person listed above shortly before the announced date. The hearing will be held in the FDA Hearing Room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than January 30, 1985. Participants other than the Center for Drugs and Biologics shall disclose data and information and submit their narrative statements pursuant to 21 CFR 12.86 on or before April 23, 1985. Pursuant to 21 CFR 10.20(j)(2)(ii), confidential material submitted by a participant must be segregated and clearly marked. The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceeding. This guideline was published in the Federal Register of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the Federal Register notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 303, 52 Stat. 1052 as amended 21 U.S.C. 555) and under authority delegated to me (21 U.S.C. 371.11), I order that a public hearing be held on the issues set forth in this notice.

Dated December 24, 1934.
Mark Novitch,
Deputy Commissioner of Food and Drugs.
[FR Doc. 84-33783 Filed 12-23-84; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 83D-0414]
Action Levels for Total Volatile N-Nitrosamines In Rubber Baby Bottle Nipples; Availability of Revised Compliance Policy Guide
AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide 7117.11, which modifies the criteria for regulatory action against rubber baby bottle nipples that contain total volatile N-nitrosamines (nitrosamines) in excess of the established action level. A 60 parts per billion (ppb) action level is currently in effect. Effective January 1, 1935. FDA will take action when any individual nitrosamine is present at a level of 10 ppb or more.

DATES: Revised Compliance Policy Guide 7117.11 was effective upon issuance. The 10 ppb action level for individual nitrosamines will apply to rubber baby bottle nipples for both consumer and hospital use that are initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 1935.

ADDRESS: Requests for single copies of FDA's revised Compliance Policy Guide 7117.11 should be submitted to the Dockets Management Branch (HFA-303), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (HFF-310), Food and Drug Administration, 2200 C St. SW., Washington, DC 20204, 202-463-0187.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 27, 1933 (86 FR 57014), FDA announced the availability of Compliance Policy Guide 7117.11. This Guide established action levels for nitrosamines in rubber baby bottle nipples (rubber nipples). A 60 ppb action level applies to rubber nipples for consumer use that are initially introduced or initially delivered for introduction into interstate commerce between January 1 and December 31, 1934, and to rubber nipples for hospital use that are initially introduced or initially delivered for introduction into interstate commerce between January 1 and December 31, 1934. The action level for rubber nipples for both consumer and hospital use will be 10 ppb for any individual nitrosamine, effective January 1, 1935.

FDA has revised Compliance Policy Guide 7117.11. Before the revision, the compliance criteria provided that a lot of rubber nipples was subject to legal action if the nitrosamine level in an appropriately analyzed sample exceeds the established action level, and each nitrosamine understood in the total is confirmed by gas chromatography-mass spectrometry. However, this wording was potentially misleading because the lowest analytical limit for reliable and consistent confirmation of any one nitrosamine for enforcement purposes currently is 10 ppb. Thus, to enforce the 10 ppb action level, at least one nitrosamine must be present in excess of that level. Other nitrosamines may be present in the analyzed sample that would be detected and reported, but confirmation of the identity of these nitrosamines may not be possible when they are present below the 10 ppb level. In some cases, each of several different nitrosamines may be present below the 10 ppb level and total nitrosamines may exceed 10 ppb, but regulatory action would not be indicated because confirmation would not be possible.

[The rest of the document contains the revised criteria for regulatory action against rubber baby bottle nipples containing nitrosamines.]
Therefore, FDA has revised Compliance Policy Guide 7117.11 to make clear that after January 1, 1985, rather than basing regulatory decisions on total nitrosamine content, the agency will take action when the presence of an individual nitrosamine at a level of 10 ppb or more is confirmed by gas chromatography-mass spectrometry. The agency has revised Compliance Policy Guide 7117.11 to reflect this change by adding the following paragraph:

After January 1, 1985, the following represent the criteria for recommending legal action to the Division of Regulatory Guidance (HFF-310):

(1) The level of any individual volatile N-nitrosamine in each of 3 aliquots from a composite of 12 rubber baby bottle nipples exceeds 10 parts per billion (ppb), and

(2) The identity of the nitrosamine that exceeds the 10 ppb level is confirmed by gas chromatography-mass spectrometry.

In the December 27, 1983 notice of availability for Compliance Policy Guide 7117.11, FDA pointed out that the nipple industry had been working to reduce nitrosamines in rubber nipples, and that substantial reductions in nitrosamine levels had been made since discovery of the problem. The agency also noted that it would monitor the industry’s progress toward achieving compliance with a 10 ppb action level during 1984. The Rubber Manufacturers’ Association (RMA), on behalf of six U.S. manufacturers of rubber nipples, has periodically reported to FDA the results of analyses of rubber nipples produced during late 1983 and all of 1984. In comments and reports filed with the agency, RMA pointed out that, in spite of the industry’s best efforts, available analytical data indicate that the industry cannot ensure consistent compliance with a 10 ppb action level by January 1, 1985. RMA requested that the agency raise the January 1, 1985, action level to 30 ppb and provide the industry with another year to reduce nitrosamine levels to 10 ppb.

FDA is denying this request. The agency recognizes that considerable efforts have been made toward achieving compliance with the 10 ppb action level, and it commends the industry’s initiative toward resolving the nitrosamine problem. However, data gathered by FDA during a 1984 survey of the nipple industry revealed that 77 percent of the consumer nipples and 96 percent of the hospital nipples tested contained less than 10 ppb of confirmable nitrosamines. The agency is encouraged by the results of this survey and believes that these results demonstrate that it is technologically feasible to produce rubber nipples that comply with the 10 ppb action level. In addition, because FDA conducted its survey in mid-1984, the samples collected most likely were produced early in the year. Consequently, there is a good chance that manufacturers have made additional improvements in their formulations and procedures since the rubber nipples that were tested in the survey were produced. Thus, the agency believes that it is reasonable to conclude that among the nipples that will be marketed in 1985, the percentage that will comply with the 10 ppb action level will be even greater than in the survey.

RMA also questioned whether the action level should be set at the limit of reliable determination for nitrosamines. RMA noted that, to ensure compliance with the 10 ppb action level, it would be necessary to set production specifications at about 4 ppb, which is near the limit of determination and, therefore, difficult to monitor. FDA recognizes that 10 ppb is currently the lowest level at which the agency can reliably and consistently confirm the identity of any nitrosamine for enforcement purposes. However, the limit of confirmation does not necessarily represent the limit of determination. Ten ppb is not the limit of reliable determination for nitrosamines. These substances can be detected at levels well below 10 ppb. Therefore, the agency finds that RMA has not presented any basis for changing this action level.

For these reasons, FDA is implementing the 10 ppb action level with the revision of Compliance Policy Guide 7117.11 discussed in this notice. The 10 ppb action level will apply to all rubber baby bottle nipples, both for consumer and hospital use, that are newly introduced or initially delivered for introduction into interstate commerce on or after January 1, 1985.

A copy of revised Compliance Policy Guide 7117.11 and the references below have been placed on public display with the Dockets Management Branch (address above) and are available for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the filed documents should reference the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

References

The following information has been placed in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

40. Revised Compliance Policy Guide 7117.11.
41. Memorandum of meeting between FDA and representatives of rubber baby bottle nipple industry, October 18, 1984.
42. Letter from Frank T. Ryan, Vice-President, Government Relations, RMA, to Robert Schaffner, Director, Office of Physical Sciences, FDA, October 25, 1984.
43. Letter from Frank T. Ryan, Vice-President, Government Relations, RMA, to Robert Schaffner, Director, Office of Physical Sciences, FDA, November 9, 1984.
44. Memorandum of meeting between FDA and representatives of rubber baby bottle nipple industry, November 20, 1984.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Administration

[Docket No. N-84-1465]
Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Crusty, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as
required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice list the following information: (1) The title of the information collection proposal; (2) the agency or the collection of the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or restatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

Author: Sec. 3507 of the Paperwork Reduction Act (44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Date: December 17, 1994.

Proposal: Modernization Needs Study
Office: Policy Development and Research
Form number: None
Frequency of submission: Single Time
Affected public: Non-Profit Institutions
Estimated burden hours: 880
Status: New
Contact: Mark Wynn, HUD, (202) 755-6437; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 14, 1994.

Proposal: Modernization Needs Study
(Redesign Study Components)
Office: Policy Development and Research
Form number: None
Frequency of submission: Single Time
Affected public: Non-Profit Institution
Estimated burden hours: 700
Status: New
Contact: Mark Wynn, HUD, (202) 755-6437; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 17, 1994.

Proposal: Modernization Needs Study
Office: Policy Development and Research
Form number: None
Frequency of submission: Single Time
Affected public: Non-Profit Institution
Estimated burden hours: 700
Status: New
Contact: Mark Wynn, HUD, (202) 755-6437; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 14, 1994.

Proposal: Modernization Needs Study
Instruments Administered to Main Sample
Office: Policy Development and Research
Form number: None
Frequency of submission: Single Time
Affected public: Non-Profit Institution
Estimated burden hours: 4,491
Status: New
Contact: Mark Wynn, HUD, (202) 755-6437; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 17, 1994.

Proposal: Modernization Needs Study
Office: Policy Development and Research
Form number: None
Frequency of submission: Single Time
Affected public: Non-Profit Institution
Estimated burden hours: 15,078
Status: New
Contact: Mark Wynn, HUD, (202) 755-5574; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 14, 1994.

Contact: Garland Allen, HUD, (202) 755-5574; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 14, 1994.

Contact: Dennis G. Gear, Director, Office of Information Policies and Systems.

[FR Doc. 94-33727 Filed 12-22-94; 8:45 am]
BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. E-84-133]

Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared by the City of Rochester, New York, for the following project under the HUD programs as described in the appendix of the Notice: Rochester Science Park, Rochester, NY. The Notice is required by the Council on Environmental Quality under its rule (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the particular project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicits information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigation measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This Notice shall be effective for one year. If one year after the publication of a Notice in the Federal Register, a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the Federal Register, then a new and updated Notice of Intent will be published.
DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 12436; 5-00259]

Realty Action; Exchange of Public Lands; Lassen and Modoc Counties, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: CA 12436; Correction of Notice of California Realty Action, exchange of public lands in Lassen and Modoc Counties, California.

SUMMARY: This document corrects a legal description, acreage total, and terms of the patent in a Notice of Realty Action for an exchange [CA 12436], published on March 15, 1984 (49 FR 9761-9762). That notice incorrectly described the public lands found suitable for exchange in Section 13 of T.41 N., R.12 E., M.D.M. California: The published description was the NW 1/4 NW 1/4 of Section 13. The correct legal description is as follows:

Mount Diablo Mendian, California

T. 41 N., R. 12 E., Sec. 13, W 1/4 NW 1/4.

The correct acreage total of public land in this exchange is therefore 8321.97 acres.

Certain parcels of the public lands will be patented subject to rights-of-way that have been previously granted by the United States. In addition to the rights-of-way described in the Notice of Realty Action, the patent will be subject to the following rights-of-way:

S 078657, a right-of-way granted for waterline purposes to Surprise Valley Electrification Corp., its successors or assigns, under the Act of April 3, 1911.

S 35534, a right-of-way granted for road and highway purposes to the State of California, Division of Highways, its successors and assigns, under the Act of August 27, 1958.

The right-of-way for Citizens Utilities described in the Notice of March 15, 1984, as number CA 5457 is correctly described as CA 5475.

The public lands described in the Notice of Realty Action will be patented subject to the following patent restrictions:

1. "Pursuant to the authority contained in section 3(d) of Executive Order 11668 of May 24, 1977, and in Section 205 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701), this patent is subject to a restriction which constitutes a covenant running with the land, that the land lying within the Federal, State, or local government-designated 100 year floodplain may be used only for (1) Farming, ranching, or other similar agricultural developments, but not for residential buildings, or (2) for park and non-intensive open space recreation purposes."

2. "Pursuant to the authority contained in Executive Order 11990 of May 24, 1977, and in Section 205 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), this patent is subject to a restriction which constitutes a covenant running with the land, that the patentee and any successor in interest will maintain the existing wetlands within the SW 1/4 of Section 13, and the E1S W1/4, W1/2 SE1/4 of Section 15, T.35 N., R.12 E., M.D.M., or will develop and maintain permanent reservoirs 160 acres or less in individual size, no more than four feet in depth, and of no less than 320 acres total surface area on lands described in this patent within T.35 N., R.13 E., T.36 N., R.13 E., T.35 N., R.12 E., and T.36 N., R.12 E., Mt. Diablo Meridian.

ADDRESSES: Any questions on this correction should be directed to the District Manager, Bureau of Land

Chaco Management Framework Plan [FR Doc. 84-33814 Filed 12-28-84; 8:45 am]
BILLING CODE

Adjudication.
Section Chief, Branch of ANCSA have waived their rights.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of section 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1611, 1612 (1978), will be issued to K'o'yot'ots'ina, Limited, for approximately 3,805 acres. The lands involved are within T. 2 N., R. 12 E., Kateel River Meridian, Alaska.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until January 30, 1984, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E [1983] (as amended, 49 FR 6271, February 21, 1984) shall be deemed to have waived their rights.

Helen Budeson, Section Chief, Branch of ANCSA Adjudication.
[FR Doc. 84-33814 Filed 12-28-84; 8:45 am]
BILLING CODE 4310-JA-M

New Mexico: Intent to Amend the Chaco Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Chaco Management Framework Plan.

SUMMARY: This notice is to advise the public that the Albuquerque District of Bureau of Land Management will amend portions of the Chaco Management Framework Plan (MFP). This action is in response to a proposal to exchange mineral interests owned by Santa Fe Pacific Railroad Company (Santa Fe) for Federal mineral interests administered by the Bureau of Land Management. The Santa Fe lands are within the designated boundary of the Chaco Culture National Historical Park and within eight of the archaeological protection sites identified in Title V of Pub. L. 99-550 (December 23, 1986). These sites include Toh-La-Kai, Bis Sa'Am, Indian Creek, Bee Burrow, Upper Kin Klizhin, Kin Nizhoni, Hayslock and Andrews Ranch. Pub. Law 99-550 authorizes acquisition of lands or interest in lands within the park or protection site (outlier) boundaries. This proposal involves acquisition of private subsurface within park or outlier boundaries through an exchange for federal minerals located adjacent to Santa Fe’s Lee Ranch Coal Mine. The Federal mineral estate is in T. 15 N., R. 8 W., Section 23, W1/2 and Section 34, N1/2, NMPM, McKinley County.

The MFP amendment/environmental assessment (amendment/EA) planned for completion by April 1985, will incorporate the exchange proposal into the Chaco MFP. Management decisions will, at a minimum, be based on the following criteria: resolution of conflicts with existing MFP decisions, consistency with National Park Service Management direction, determination of equal value, and benefit to the public. The amendment will assess the environmental and socio-economic impacts of the exchange proposal, and will be conducted by staff specialists from the BLM and the National Park Service. Background standards and procedures for the preparation of this amendment/EA are contained in 43 CFR Part 1600.

Public participation opportunities will be provided in the following ways: (1) A review and comment period is provided in this notice, ending 30 days from the date of this publication; (2) A news release will appear in local newspapers, asking interested parties to identify issues of concern and impacts that should be addressed; (3) A notice of intent to amend the MFP will be sent to Federal, state, and local governments that would be concerned with the plan or have land use regulatory authority in the vicinity of the proposed amendment, asking them to identify issues and concerns; (4) Open houses will be held from 2-4 p.m. and 7-9 p.m., Tuesday, January 22, 1985, at the Albuquerque District, Río Puerco Resource Area Office, 3350 Pan American Freeway, NE, Albuquerque, New Mexico. The purpose of these informal meetings is to discuss the proposal, and receive any pertinent information that the public has; (5) The MFP Amendment/Environmental Assessment will be distributed in February 1985. A proposed amendment is approved by a 20-day protest period. Individuals may protest only those items submitted by them for the record during the planning process (43 CFR 1610.5-2).

DATE: The date of this notice is the date of publication.

FOR FURTHER INFORMATION CONTACT: For further information and to respond to the 20 day comment period for review of this notice, contact Betty Sladek, Bureau of Land Management, Albuquerque District Office, 503 Marquette, NW, Suite 819, P.O. Box 6770, Albuquerque, New Mexico 87197-6770, telephone (505) 765-2453. Documents relevant to the planning process are available for public inspection at the above address.

Charles W. Ludwig, State Director.
[FR Doc. 84-33303 Filed 12-23-84; 8:45 am]
BILLING CODE 4310-44-M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory materials may be obtained by contacting the Bureau’s clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20250, telephone 202-355-4756.

Title: State Water Research Institute Program, 30 CFR part 401.

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau Form Number: None.
Frequency: Annually.
Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.


SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1146, Block 245, Vermillion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on December 14, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region; Minerals Management Service, 3C01 North Causeway Blvd., Room 427, Metairie, Louisiana (Office Hours: 9 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region; Exploration/Development Plans Unit; Plans, Platform and Pipeline Section; Minerals Management Service; Gulf of Mexico OCS Region; Minerals Management Service, 3C01 North Causeway Blvd., Room 427, Metairie, Louisiana (Office Hours: 9 a.m. to 5 p.m., Monday through Friday).

Nuclear Regulatory Commission

Notice of Consideration of Issuance of Amendment to Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission’s regulations in 10 CFR 50.82, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 60 days after publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination...
unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S.
Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By January 30, 1983, the licensee may file a request for a hearing with respect to issuance of an amendment to the subject facility operating license and any person whose interest may be affected by this proceeding who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who files a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Secretary of the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balance of the factors specified in 10 CFR 2.714(a)-(d) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: August 1, 1983.

Description of amendment: The proposed amendment would reverse the license to delete a portion of the fire protection related license conditions which were imposed in September 1978. Specifically, the amendment would delete in the interest of clarity a list of eight fire protection related plant modifications that will not be effected in a manner as described in the license conditions because the requirements from which they emanated have been superseded by the requirements in the revised section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 which became effective on February 17, 1981.

Basic for proposed no significant hazards consideration determination: There are twenty fire protection related...
plant modifications which were identified in the staff Fire Protection Safety Evaluation Report (FPSER) of August 1976 as incomplete in the ANO–2 fire protection program. These items were imposed on the licensee as license conditions with required implementation dates in order to afford additional fire protection to that existing. They can be divided into two categories. The first category consists of those plant modifications that have been satisfactorily completed. Items 3.1.1, 3.2, and Items 3.11 through 3.20 are in this category. The second category consists of those items that were required to ensure that systems and associated circuits used to achieve and maintain safe shutdown are free from fire damages. It is the deletion of the fire protection related plant modifications in this category from the license that is being addressed in this notice. Items 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, and 3.10 are in this category. For these items, the licensee proposed modifications that satisfied the guidance of Appendix A to Branch Technical Position BTP APCSB 9.5–1 and the staff approved the proposed modifications. However, the applicable requirements in a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 superseded the provisions of Appendix A to BTP APCSB 9.5–1 for those fire protection features related to safe shutdown capability. Accordingly, in complying with the regulation, Appendix R, the licensee did not effect these modifications as described in the FPSER. However, it should be noted that all of the fire protection features related to safe shutdown capability which include these items are required to be upgraded in accordance with more restrictive Appendix R requirements. Thus, this portion of the proposed change matches an example of "no significant hazards" in the guidance provided by the Commission, namely, a change to make a license conform to changes in regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Based on the foregoing, the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room
Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.


NRC Branch Chief: James R. Miller.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: December 22, 1993, April 9, 1984 and June 29, 1984.

Description of amendment request: The proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) to incorporate new requirements for the following equipment: (1) Reactor coolant system (RCS) vents, as described in the licensee application dated December 22, 1993, (2) post accident sampling system (PASS) as described in the licensee's application dated June 29, 1984, (3) wide range noble gas monitor (WRNGM), as described in the licensee's application dated April 9, 1984, (4) containment high range monitors and main vent wide range noble gas effluent monitors as described in the licensee's application dated April 9, 1984.

The remaining issues addressed in the applications dated December 22, 1993, April 9, 1984, and June 29, 1984 will be addressed in future correspondence.

Basis for proposed no significant hazards consideration determination: On November 1, 1983, the NRC issued Generic Letter No. 83–37 (GL 83–37) to all pressurized water reactor licensees. This letter established a new category of TS which the NRC believed to be appropriate as addressed in NUREG–0737, "Clarification of TMI Action Plan Requirements" The licensee responded, in part, to GL 83–37 via their applications for license amendments referenced above. The proposed TS are as follows:

RCS Vents—A new TS 3/4.4.13, "Reactor Coolant System Vents" would be established to provide Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SRs) for this equipment.

PASS—A new TS 3/4.7.13, "Post Accident Sampling System" would be established to provide LCOs and SRs for this equipment.

WRNGM—A new TS 3/4.3.3.8, "Radioactive Gaseous Effluent Monitoring Instrumentation" would be established to provide LCOs and SRs for this equipment.

Containment High Range and Main Vent Wide Range Monitors—Existing TS Table 3.3–6, "Radiation Monitoring Instrumentation," and TS Table 4.3–3, "Radiation Monitoring Instrumentation Surveillance Requirements" would be modified to include LCOs and SRs for this equipment.

These TS, as described above, would increase the likelihood that the associated equipment will undergo appropriate surveillance and be available to assist in post-accident assessment. In each case, the proposed TS represents an additional limitation or restriction in that, in the event that the equipment becomes inoperable, the applicable LCO requires remedial action which was not previously required.

On April 9, 1983, the NRC published guidance in the Federal Register (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards consideration. One such example (ii) involves a change that constitutes an additional limitation or restriction, or control not presently included in the technical specification. Since in each case the proposed TS represent additional LCOs and SRs not previously in the TS, these proposed changes are consistent with example (ii). Accordingly, the Commission proposes to determine that these proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room
Location: Calvert County, Prince Frederick, Maryland.


NRC Branch Chief: James R. Miller.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: June 15, 1984.

Description of amendment request: The proposed amendments would change the expiration date for the Unit 1 Operating License, DPR–53, from July 7, 2003, to July 31, 2014, and change the expiration date for the Unit 2 Operating License, DPR–65, from July 7, 2009, to August 13, 2016.

Basis for proposed no significant hazards consideration determination: The currently licensed term for Calvert Cliffs Units 1 and 2 is 40 years commencing with issuance of the construction permit (July 7, 1989). Accounting for the time that was required for plant construction, this represents an effective operating license term of 35 years for Unit 1 and 33 years for Unit 2. The licensee’s application requests a 40-year operating license term for Calvert Cliffs Units 1 and 2.

The licensee’s request for extension of the operating license is based primarily
on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated to maximize the insensitivity of structures, systems and equipment. Surveillance and maintenance practices which are implemented in accordance with the ASME code and the facility Technical Specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of 40 years of operation at full power with a plant capacity factor of 60% (32 effective full power years). Analyses have demonstrated that expected cumulative neutron fluences will not be a limiting consideration. In addition to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation. Aging analyses have been performed for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant.

Based upon the above, it is concluded that extension of the operating licenses for Calvert Cliffs Units 1 and 2 to allow a 40-year service life is consistent with the safety analyses in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no changes in the Technical Specifications or safety analyses, we conclude that the proposed amendment would not: (i) involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

Based upon the above, the Commission proposes to determine that the proposed amendments, which provide for a 40-year service life for Calvert Cliffs Units 1 and 2, involves no significant hazard consideration.

**Local Public Document Room**

**Location:** Calvert County Library, Prince Frederick, Maryland.

**Attorney for licensee:** George F. Troubridge, Esq., Shaw, Pitman, Ftols and Troubridge, 1200 M Street, N.W., Washington, D.C. 20036.

**NRC Branch Chief:** James R. Miller.

**Baltimore Gas and Electric Company**, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

**Date of application for amendments:** June 29, 1994.

**Description of amendment request:** The proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) to reflect: (1) a change in the surveillance requirements for the Switchgear Room halon and Cable Spreading Room total flood halon systems, TS 4.7.11.3, and (2) a decrease in the surveillance frequency for the Reactor Protection System (RPS) logic matrices and logic trip relays, TS 4.3.1.1.1.

These changes to the TS are in partial response to the application dated June 29, 1983. The remaining issues addressed in this application will be addressed separately.

**Basis for proposed no significant hazards consideration determination:** On July 8, 1983, the NRC issued Generic Letter 83-28 (GL 83-28), "Required Actions Based on Generic Implications of Salem ATWS Events." One requirement, associated with Item 3.2 (Post-maintenance Testing) of GL 83-28, required licensees to identify "* * * existing Technical Specifications which are perceived to degrade rather than enhance safety." By application dated June 29, 1984, the licensee identified two TS Surveillance Requirements which are believed by the licensee to degrade rather than enhance safety.

The first such Surveillance Requirement, TS 4.7.11.3c.2, is applicable to the Switchgear Room Halon and Cable Spreading Room total flood halon systems. The current TS require a flow test every 18 months to detect blockage of the flow path. The proposed TS would substitute an annual visual inspection of the nozzles and visible flow path of these halon systems. A flow test would still be required following major maintenance or modification of the system.

To perform the presently required flow test, the system integrity must be broken, the line purged with nitrogen, and then system integrity re-established. Breaking system integrity involves removing the halon bottle connection(s) from the flexline. This is a threaded connection and the more frequently this surveillance is performed the more likely premature degradation of the threads becomes. During the period the flow test is performed, the halon system is unavailable. By performing a visual inspection, system unavailability and thread degradation will be reduced. Moreover, unless major maintenance or system modification is undertaken, it is unlikely that a flow blockage would occur. The Cable Spreading Room is supplied by filtered air through a common air conditioning system serving the Control Room and Cable Spreading Room. Similar filters serve the Switchgear Room Heating, Ventilation, and Air Conditioning system supply line. Foreign materials blocking the nozzle would be detected by visual inspection. Because of the physical size of the discharge nozzle ports (approximately one inch in diameter) clogging by dust or dirt is not likely.

Since the reliability of the halon system will not be degraded, the proposed TS change will not involve any significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new different kind of accident from any accident previously evaluated for conditions where these halon systems are assumed to function. Since the proposed TS change in no way reduces the effectiveness of the halon system, no decrease in any margin of safety will occur. Accordingly, the Commission proposes to determine that the proposed change to TS 4.7.11.3c.2 involves no significant hazards considerations.

Finally, the licensee has proposed a change to TS 4.1.11.1.1 (TS Table 4.3-1) to reduce the frequency of Reactor Protection System (RPS) logic matrices and matrix relay functional tests from monthly testing to quarterly (4 times per year) testing.

The RPS is described in Section 7.2 of the Updated Final Safety Analysis Report (FSAR) as the primary means to effect reliable and rapid reactor shutdown if any one or a combination of conditions deviates from a preselected operating range. The system functions to protect the core and reactor coolant system pressure boundary.

The system utilizes four trip paths operating through the coincidence logic matrices to maintain or remove power from the Control Element Drive Mechanisms. Four sensor channels monitor each input parameter and utilize six two-out-of-four logic matrices to initiate a reactor trip. Operation of at least two of the four logic matrix relays in one of the six logic matrices is required to initiate a reactor trip.
Each of the logic matrix relays is exercised monthly by testing under the current TS. In order to verify proper operation of the matrix relays, two reactor trip breakers must be opened by each matrix relay. Typical testing cycles of the reactor trip breakers several times. Under a separate surveillance test, the reactor trip breakers must be functionally tested at least once per month. This unnecessary cycling of the reactor trip breakers, resulting from monthly testing of the matrix relays, has the potential to degrade safety by causing excessive wear on the mechanical trip mechanisms of the reactor trip breakers.

This proposed change would serve to reduce the frequency of testing the logic matrices or their matrix relays to at least once per quarter, but would retain the monthly functional test for the reactor trip breakers. As stated above, this would reduce the number of unnecessary cycles of the reactor trip breakers during surveillance tests.

Based upon the above, quarterly testing of the RPS logic matrices and matrix relays assures proper functioning of this equipment. Since the reliability of the RPS is not degraded, the proposed change does not involve a significant increase in the probability or consequences of accidents previously analyzed or create the possibility of a new or different type of accident. Under conditions where the RPS is assumed to function. Since no changes in design or operating conditions associated with the RPS are involved, no reduction is safety margins are involved. Accordingly, the Commission proposes to determine that the proposed changes to TS 4.3.1.1.1 involves no significant hazards considerations.

Basis for proposed no significant hazards consideration determination: The licensee has proposed changes to TS 3/4.3.3.4, "Meteorological Instrumentation" and Figure 5.3-1, "Site Plan" to reflect installation of a new meteorological monitoring system at Calvert Cliffs. The new system corrects a number of problems associated with the old system and substantially conforms to NRC guidance for meteorological monitoring systems. The proposed revised TS provide requirements for surveillance and operability that are at least equivalent to those required for the old system. Postaccident monitoring of meteorological conditions can be, therefore, expected to improve as a result of operability of the new system.

In addition, the licensee has proposed to delete the operability and surveillance requirements for the previously required meteorological monitoring system.

The new meteorological system does not impact plant safety systems and the new system is at least equivalent to the previously approved system, therefore: (1) The probability or consequences of accidents previously evaluated will not increase, (2) no new types of accidents will be created and (3) no safety margins will be reduced. Accordingly, the Commission proposes to determine that the proposed changes to the TS, which incorporate the new meteorological monitoring system in the TS and deletes requirements on the previously required system, involve no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.


NRC Branch Chief: James R. Miller.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: September 20, 1984.

Description of amendment request: The proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) to reflect installation of a new meteorological monitoring system and deletion of certain meteorological monitoring requirements of TS 3/4.3.3.4.

Basis for proposed no significant hazards consideration determination: The existing Calvert Cliffs TS 4.6.1.2a references Appendix J of 10 CFR Part 50 and requires that: "Three Type A tests (Overall Integrated Containment Leakage Rate) shall be conducted at 40±10 month intervals during shutdown (P. 50 psig) or at P. (25 psig) during each 10-year service period. The third test of each shall be conducted during the shutdown for the 10-year plant inservice inspection."

The currently scheduled 10-year ISI outage would be in the fall of 1986 for Unit 1 and in the spring of 1987 for Unit 2. Performance of the third ILRT during the 10-year ISI outage which is required by Appendix J would result in the violation of the 40±10 month interval required by the TS. Accordingly, the licensee has requested a "one time only" change to the ILRT schedule, as reflected in TS 4.6.1.2a, to allow the third ILRT to be conducted during the spring 1985 and fall 1985 refueling outages for Units 1 and 2, respectively, and thus, earlier than indicated by Appendix J. The proposed schedule would satisfy the 40±10 month inspection interval requirement of TS 4.6.1.2a which is deemed to be of primary importance in the more frequent maintenance of containment integrity via the ILRT program. The coincidence of the third ILRT with the 10-year ISI outage is of clearly secondary importance for this "one time only" schedule change. An exemption from Appendix J to allow earlier containment testing is being considered in a separate but parallel notice.

On April 6, 1983, the NRC published guidance in the Federal Register (8 FR 49570) concerning examples of amendments that are not likely to involve significant hazards consideration. One such example (vi) involves "a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component * * * In the October 11, 1984 application, the system in question is the reactor containment. Since the proposed change to the ILRT schedule would still meet the acceptable criteria of a 40±10 month test interval, the proposed amendment is encompassed by example (vi) and, on that basis, the Commission proposes to determine that the proposed change to TS 4.6.1.2a involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.
Baltimore Gas and Electric Company, Docket Nos. 59-317 and 59-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 11, 1984.

Description of amendment request: The proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) to incorporate Radiological Effluent Technical Specifications (RETS) that would bring the licensee into compliance with Appendix I of 10 CFR Part 50. They provide new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. These changes would also incorporate into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes would be made in administrative controls, specifically dealing with the process control program and the offsite dose calculation manual. The proposed amendments would remove the current Radiological Effluent Technical Specifications from the Appendix "B" Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standard in 10 CFR 50.92 by providing certain examples (48 FR 14979). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50, required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as reasonably achievable. In complying with this requirement, it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the addition of Technical Specifications described above. The staff proposes to determine that the application does not involve a significant hazards consideration since the changes constitute additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission mandated release of "as low as is reasonably achievable" Local Public Document Room Location: Calvert County Library, Prince Frederick, Maryland.


NRC BRANCH CHIEF: James R. Miller.

Carolina Power and Light Company, Docket No. 59-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of amendment request: September 12, 1984.

Description of amendment request: The amendment would change the Technical Specifications to raise the maximum temperature requirements for pressurizing the secondary side of the steam generator above 200 psig from 70 °F to 120 °F. The licensee made this request because new steam generators have been installed with shells that have higher NDT values (60 °F) than that of the previous steam generator shells; NDT value (10 °F).

Basis for proposed no significant hazards consideration determination: Under the provisions of 10 CFR 50.92 the Commission may make a final determination pursuant to the procedures in 50.91, that a proposed amendment to an operating license for a facility licensed under 50.21(b) or 50.22 or for a testing facility involves not significant hazards considerations, if operation of the facility in accordance with a proposed amendment would not:
1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to this amendment follows:

The licensee has replaced their three steam generators. The previous steam generator shells had an NDT value of 10 °F. Section 3.1.2.2 of the existing Technical Specification provided an LCO requiring that the secondary side of the steam generator (SG) must not be pressurized above 200 psig if the temperature of the SG vessel is below 70 °F. A margin of 60 °F was, therefore, provided for safety. The shells of the replaced SGs have an NDT value of 60 °F. Therefore, in order to provide the new steam generator shells with the same margin of safety as the previous shells, the licensee proposes to add the same 60 °F margin to the new NDT value of 60 °F and revise Section 3.1.2.2 of the Technical Specification to now require a SG vessel temperature of 120 °F prior to pressurizing the vessel above 200 psig.

Therefore, since the licensee has maintained the same margin, i.e., 60 °F:
1. A significant increase in the probability or consequences of an accident previously evaluated is not involved, (2) the possibility of a new or different kind of accident from any accident previously evaluated has not been created, and (3) a significant reduction in a margin of safety is not involved. On this basis, the Commission proposes to determine that the amendment involves a no significant hazards consideration.


NRC BRANCH CHIEF: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. 59-237/239, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: February 10, 1984 as supplemented by a letter dated August 2, 1984.

Description of amendment request: The request would incorporate Technical Specifications (TS) changes in two areas, reactor coolant iodine limits and station batteries, as required for resolution of Systematic Evaluation Program Topics VI-7.C.1 and XV-16. The proposed changes regarding reactor coolant activity limits involve revising reactor coolant activity limits to an Iodine-131 dose equivalent value and required actions to be taken if these limits are exceeded. The battery changes involve the 125- and 250-volt station batteries and include: (1) Limitations delineating the passageway that a battery may be inoperable before plant shutdown is required, (b) updating the Limiting Conditions for Operations bases to define an inoperable battery and reflect the addition of another battery charger, (c) modifying weekly surveillance requirements and (d) changing the surveillance requirement related discharge tests on each unit's station batteries.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of these standards by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions involving no significant hazards consideration relates to additional limitations, restrictions or controls not presently included in the Technical Specifications (Example ii). The proposed TS, except for (c), the weekly surveillance requirements, all constitute additional or more stringent limitations or restrictions not presently included in the TS and are consistent with Example (ii). On this basis, the staff, therefore, proposes to determine that these actions would involve a no significant hazards consideration.

The weekly surveillance requirements have been changed to be in conformance with the maintenance surveillance standards for generating station batteries in IEEE-450 (1975). The staff has endorsed these standards in Regulatory Guide 1.129—Revision 1. Thus, the staff proposes to determine that this surveillance requirement also involves no significant hazards consideration because it would not involve a significant increase in the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident from any previously evaluated and would not involve a significant reduction in a margin of safety.

**Local Public Document Room Location:** Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

**Date of amendment request:** January 13, 1984 as supplemented by letters dated March 5, May 1, August 2, and September 21, 1984.

**Description of amendment request:** The proposed changes to the Technical Specifications (TS) reflect (1) Changes made to Commonwealth Edison’s corporate and station organizations and (2) Changes necessitated by revisions to 10 CFR sections 50.54 and 50.72 and the addition of a new section 50.73 which revised the minimum operator staffing, immediate notification requirements and the Licensee Event Reporting system, respectively.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (April 6, 1983, 48 FR 14870). These proposed amendments fall under two of the examples. The changes made to the corporate and station organizations are covered by example (i) since they are administrative changes based on Generic Letter 84-13. The changes to functional testing and the allowance for velocity range tests are covered by example (ii) since they constitute additional limitations not presently included in the technical specifications. The staff, therefore, proposes to determine that these amendments involve no significant hazards consideration.

**Local Public Document Room Location:** Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

**Attorney for licensee:** Robert G. Fitzgibbons, Jr., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

**NRC Branch Chief:** John A. Zwolinski.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 59-293 and 59-304, Zion Station, Unit Nos. 1 and 2, Zion, Illinois

Date of application for amendments: October 23, 1984.

Description of amendments request:
The amendments would add a specification for reactor coolant system vents installed in accordance with NUREG-0737. CEC proposes to add a new specification—3.3.1.G—imposing a new control to assure operability of the Reactor Vessel Head Vent System. The proposed changes are consistent with the guidance provided in NRC Generic Letter 83-57.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of the standards by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards include actions which involve a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The changes requested fall in this category.

Local Public Document Room location: Zion-Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60093.


NRC Branch Chief: Steven A. Verga.

Duke Power Company, Docket Nos. 59-320 and 59-329, Mecklenburg Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 31, 1984.

Description of amendment request:
The amendment would change Technical Specification Section 4.8.1.2.C.7.c to permit the use of time overcurrent trips in the protective circuits for emergency diesel generators to prevent destruction of a diesel generator in the event of a multiphase fault on a switch gear bus. Protective automatic trips of the diesel generator circuit breakers are presently required to be automatically bypassed upon loss of voltage on the emergency bus concurrent with a safety injection signal and the proper functioning of these bypasses is required to be verified at least once per 16 months. The change to the design would exempt the diesel generator time overcurrent trips from the
above stated requirement for automatic bypassing of diesel generator protective trips.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14370) of action likely to involve no significant hazards considerations. One of these (vii) is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce a safety margin in some way, but the results of the change are clearly within all acceptable criteria. In the event of a switch gear bus fault, the proposed diesel generator time overcurrent trip would trip the diesel generator breaker only. The associated diesel generator would remain operating and could be manually reconnected to the emergency bus when the bus fault is removed.

Without the protective trip, a multiphase bus fault could quickly destroy the diesel generator. There is a small probability that safety injection would be required when the diesel generator breaker is spuriously tripped; however, for this event the redundant emergency power division is available to perform the safety function.

Regulatory Guide 1.9 recommends that protective trips which are not automatically bypassed by a safety injection signal (except engine overspeed and generator differential) have two or more independent measurements for each trip parameter with coincident logic to minimize spurious trips. In addition, Regulatory Guide 1.9 recommends that the bypass circuit include the capability for testing circuit status and operability and for alarming abnormal values of bypassed parameters in the control room. The proposed generator time overcurrent trip circuits meet these criteria in Regulatory Guide 1.9. Because the proposed change in Technical Specifications to permit the use of these protective trips is similar to example (vii) in 49 FR 14370, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCNC Station), Charlotte, North Carolina 28223.

Attorney for licensees: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 28, 1984.

Description of amendment request: The proposed amendments would delete the surveillance requirements in the Technical Specifications relating to steam generator blowdown valves (Table 3.3-2). The licensee proposes to remove these valves, therefore surveillance will no longer be required.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14370). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to administrative changes to the Technical Specifications. The steam generator blowdown valves were originally installed to accommodate the Steam Generator Blowdown Recycle System subcooling heat exchangers. The valves were required to prevent releases of containment atmosphere through a potentially unisolated Main Steam Isolation Valve. The heat exchangers have been removed, therefore the steam generator blowdown valves are no longer needed.

The licensee proposes to remove these valves and, therefore, will no longer need to have surveillance requirements for these valves. These proposed changes to the Technical Specifications to delete surveillance requirements for the valves merely reflect that the valves will no longer be present. These license changes are purely administrative in nature and are encompassed by the Commission's example (ii) of actions not likely to involve significant hazards considerations.

On this basis, the NRC staff proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCNC Station), Charlotte, North Carolina 28223.

Attorney for licensees: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28222.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 15, 1984.

Description of amendment request: The requested amendment would revise Technical Specifications to reflect the transition to the use of optimized fuel assemblies in McGuire Unit 2.

Also, some of the Technical Specifications changes resulting from the Unit 2 reload will be applied to Unit 1; however, these changes involve only administrative type changes (i.e., correction of minor errors/typos, clarifications) or are improvements incorporated for the Unit 2 specifications which are more conservative than the existing Unit 1 specifications. In addition, Technical Specification 3.5.1.2 is revised to delete the inadvertent application to Unit 1 of a provision which does not apply to the current core design. Finally, changes are being made to the time constants used in the overpower and overtemperature delta T setpoint equations to allow more flexibility in plant operations.

Basis for proposed no significant hazards consideration determination: McGuire Unit 2 has been operating with a Westinghouse 17x17 (STD) fueled core. It is proposed to refuel McGuire Unit 2 with Westinghouse 17x17 Optimized Fuel Assembly (OFA) regions, which McGuire Unit 1 is already using. The major differences are the use of six intermediate (mixing vane) Zircaloy grids for the OFA fuel versus six intermediate (mixing vane) Inconel grids for STD fuel and a reduction in fuel rod diameter. As a result, future core loadings would range from an approximately 1/2 OFA-1/2 STD transition core to eventually all OFA fueled core. The OFA fuel has similar design features compared to the STD fuel which has had substantial operating experience in a number of nuclear plants. Major advantages for utilizing the OFA are: (1) Increased efficiency of the core by reducing the amount of parasitic material and (2) reduced fuel cycle costs due to an optimization of water to uranium ratio.

The results of analyses and tests in support of the McGuire Unit 2 reload lead to the following conclusions:

a. The Westinghouse OFA reload fuel assemblies for McGuire Unit 2 are mechanically compatible with the current STD design, control rods, and reactor internals interfaces. Both types of fuel assemblies satisfy the current design bases for McGuire Unit 2.
b. Changes in the nuclear characteristics due to the transition from STD to OFA fuel will be within the range normally seen from cycle to cycle due to fuel management effects.

c. The reload OAs are hydraulically compatible with the current STD design.

d. The accident analyses for the OFA transition core were shown to provide acceptable results by meeting the applicable criteria, such as minimum DNB, peak pressure, and peak clad temperature, as required. The previously reviewed and licensed safety limits will still be met.

e. Plant operating limitations will be satisfied by the proposed Technical Specification changes.

From the above it is concluded that the Unit 2 reload will not cause any safety limits to be exceeded.

The effect of the time constant changes is evaluated by reanalyzing the limiting event that rely on overpower and overtemperature delta T protection. The limiting RCCA Withdrawal at Power cases from the reload analyses have been reanalyzed with the increased time constants in the overtemperature delta T setpoint equation. The results show that thedeparture from nucleate boiling (DNB) design basis is met. The overpower delta T trip is not relied upon for protection in any of the FSAR accident analyses. However, a spectrum of streamline breaks was analyzed at various power levels to determine the limiting cases that are presented in the FSAR. Some of the small streamline breaks that were analyzed rely on overpower delta T for protection. Therefore, an analysis was performed that verifies that the DNB design basis is met for small breaks at full power with the increased time constants in the overpower delta T setpoint equation.

The Commission has provided certain examples of amendments likely to involve no significant hazards considerations (48 FR 14870). One example of this type is [vi]. "A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method." Because the evaluations previously discussed show that all of the accidents comprising the licensing bases which could potentially be affected by the fuel reload and time constant changes were reviewed with the result that the reload design and time constant changes do not cause any safety limits to be exceeded, the above example encompasses these changes. On this basis, the staff proposes to propose that the license amendments reflecting transition to the use of optimized fuel assemblies at McGuire Unit 2 and the changes in time constants for the overpower and overtemperature delta T setpoint equations do not involve significant hazards considerations.

Finally, there are changes resulting from the Unit 2 reload which will be applied to Unit 1. These changes are either administrative in nature or are conservative improvements incorporated for the Unit 2 specifications. Also, Technical Specification 3.5.1.2 is being corrected for Unit 1 to reflect the already installed OAs in Unit 1 by modifying the specification in accordance with the Unit 2 OFA reload revision. This change is conservative because it deletes the provi~ion which allows the upper head injection accumulator system to be inoperable at less than or equal to 45 degrees rated thermal power.

Another example of an amendment likely to involve no significant hazards consideration relates to a change that constitutes an additional limitation, restrictions, or control not presently included in Technical Specifications and another example relates to a purely administrative change to Technical Specifications such as correction or error in Technical Specifications. The Technical Specification changes which are administrative in nature or more conservative than existing specifications match these two examples. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room

Location: Athens Library, University of North Carolina, Charlotte (UNC) Station, North Carolina 28242.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33193, Charlotte, North Carolina 28219.

NRC Branch Chief: Elinor G. Adenson.

Duke Power Company, Dockets Nos. 50-265, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: November 9, 1984.

Description of amendment request: The proposed amendments would revise the common Technical Specifications to permit Oconee Unit 2 a one-time extension of the interval for inspecting inaccessible hydraulic snubbers such that the inspection be performed during the 1935 Unit 2 refueling outage, provided that such outage begins no later than March 15, 1935. The inspection is currently required to be performed before February 14, 1935.

In consideration of the one-month extension, the licensee investigated the history of hydraulic snubber failures. The investigation encompassed the hydraulic snubbers for all three units, both inaccessible and accessible hydraulic snubbers. The licensee summarized the results of the investigation in its September 9, 1984, application and has concluded that the data indicate that the failure rate for hydraulic snubbers is historically very low. The licensee states that in reviewing past Oconee visual inspection results from 1977 to the present, it appears reasonable to expect only one inaccessible hydraulic snubber per unit per year. This provides assurance that the snubber population quality is high. Since the failure rate has been established over a 6 to 7-year period of time, it is a strong predictor of future snubber failures. Based on experience and its maintenance program, the licensee expects the condition of the snubber population to be at least as good as that found in the 1983 Unit 2 Refueling Outage Inspection of those snubbers, if not better. The licensee believes that a one-month extension to the current inspection interval will not significantly increase the potential for finding an inaccessible snubber, therefore, there will be no significant increase in the potential for affecting plant safety.

Basis for proposed no significant hazards consideration determination: The proposed amendments would extend by one month, the current inspection interval for the visual inspection for the inaccessible hydraulic snubbers for Unit 2. These snubbers are designed to prevent unrestrained pipe motion during and following a severe transient or seismic disturbance. Specifically, the proposed Technical Specification revision involves delaying the next scheduled inspection of the Unit 2 inaccessible hydraulic snubbers until March 15, 1935. This inspection is presently scheduled for February 14, 1935, as discussed in a letter dated May 11, 1934, from the licensee.

In support of the request for extension, the licensee investigated the history of hydraulic snubber failure and concluded that historically the failure rate has been low, and therefore, a high quality snubber population can be expected. During the most recent visual inspection of the Unit 2 inaccessible hydraulic snubbers, performed on
September 19, 1983, the fluid reservoirs for two snubbers had been found empty. Both snubbers were removed to be functionally tested. However, the test performed was invalid as oil was added to the reservoirs prior to testing. The licensee performed a detailed technical evaluation of the situation and determined that one of the snubbers was, in fact, operable at the time of the inspection. A discussion of the evaluation was provided to the NRC by the licensee's letter dated May 11, 1984.

Furthermore, the inaccessible snubber population for Unit 2 has been undisturbed since November due to no maintenance activities. Reduced area maintenance activities means reduced chances of mechanical damage to the snubbers. This increases our confidence in the operability of the snubber population. The licensee's Hydraulic Snubber Seal Life Extension Program currently requires 100% inspection of the station's accessible hydraulic snubbers every six months. These inspections are used as a tool to help predict the condition of the inaccessible snubber seals. The licensee has a high confidence level that the snubber seals are in good condition based on the seal life program, Technical Specification inspections, and past records. Therefore, fluid leakage due to seals should be minimal.

The Commission has provided guidance concerning the determination of significant hazards considerations by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not 1) involve a significant increase in the probability or consequences of an accident previously evaluated, or 2) create the possibility of a new or different kind of accident from any accident previously evaluated, or 3) involve a significant reduction in a margin of safety.

This requested amendment will not increase the probability that a severe transient or seismic disturbance will occur. The one-month extension to the current inspection interval does not impact the probability that these events will occur.

The discussion above indicates that there is an insignificant increase in the probability of finding an inoperable snubber. The discussion also indicates that during the one-month extension, the likelihood of snubbers becoming inoperable is very small. As a result, if a dynamic event were to occur which would challenge these snubbers, the consequences resulting from such an event would not be significantly increased by the proposed amendments.

The proposed amendments allowing for a one-month extension of the inspection interval do not in any way create the possibility of a new or different kind of accident from any accident previously evaluated. The licensee believes that there is a very low probability of finding an inoperable hydraulic snubber of Unit 2 from the one-month extension. Thus, the margin of safety by these snubbers to the systems in which they are installed will not be significantly reduced by the proposed amendments.

Based on the above, the staff proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Date of amendment request: October 10, 1984.

Description of amendment request: This is an application for an amendment to Operating License DPR-66, revising the Technical Specifications as follows: 1. Sections 4.1.1.1.1 and 3.10.1 would be changed to correct editorial errors. 2. Table 4.3-12 would be modified to correctly specify the actual automatic isolation and control room annunciation function performed by the Auxiliary Feed Pump Bay Drain monitor. 3. A new specification would be added to Section 4.6.2.1 to require verification of the minimum river water flow rate through each recirculation spray subsystem. 4. A number of sections would be revised to delete listings of mechanical and hydraulic snubbers, but to simply require operability of snubber on safety-related systems and those whose failure could adversely affect safety-related systems. These changes are responsive to the staff's Generics Letter 84-33. Requested changes in the quantities, types or locations of snubbers would not be changed. The requested change only changes the way a requirement is stated.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (40 FR 14070). One of these, Examples (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." Requested change number (3) matches the example and the staff, therefore, proposes to characterize it as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliguppa, Pennsylvania 15001.


NRC Branch Chief: Steven A. Verga.

Georgian Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-326, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia.

Date of amendment request: August 1 and October 1, 1984.

Description of amendment request: This submittal is a revision to a previous request for amendments dated December 21, 1978, as supplemented October 30, 1979, which was noticed in the Federal Register on October 26, 1983 (48 FR 49595). The August 1, 1984, submittal, as supplemented and clarified by the October 1, 1984, submittal, is a complete revision of the previous request and incorporates numerous changes to ensure that the proposed Radiological Effluent Technical Specifications (RETS) meet the intent of current NRC staff positions presented in NUREG-0473, "Radiological Effluent Technical Specifications for BWRs, 10 CFR 50.38a, and Appendix I to 10 CFR Part 50. The August 1 and October 1, 1984, proposed amendments provide, as did the previous submittal noticed on October 26, 1983, 1) new Limiting Conditions for Operation and Surveillance Requirements for controlling radioactive effluent releases and for treatment of radioactive wastes; 2) a radiological environmental monitoring program; 3) bases that support the Limiting Conditions for Operation and Surveillance Requirements; and 4) administrative

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controls dealing with the Process Control Program and the offsite Dose Calculation Manual. The proposed amendments would remove the current Radiological Effluent Technical Specifications from the Appendix "B" Technical Specifications.

Basis for proposed no significant hazards consideration determinations: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples ([FR 1987]). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. Licenses are required by 10 CFR 50.36a to install, maintain, and operate the radioactive waste treatment systems in a manner that would keep releases of radioactive material during normal operation to unrestricted areas as low as reasonably achievable. To ensure compliance with this requirement, it is necessary to add additional restrictions and controls to the Technical Specifications as described above. The Commission’s staff proposes to determine that the application does not involve a significant hazards controls that are not currently included in the Technical Specifications in order to meet the Commission mandated release of "as low as is reasonably achievable." The Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.


NRC Branch Chief: John F. Stolz.


Date of amendment request: October 19, 1984.

Description of amendment requests: The proposed amendments would (1) allow locked, sealed or secured valves, flanges and deactivated automatic valves, including some inside containment, to be verified as closed during cold shutdown on Unit 1; (2) delete a specific reference to a requirement for a cycling test every 24 days on containment isolation valves on Unit 1 and substitute a reference to measuring isolation times on containment isolation valves in accordance with applicable ASME Section XI requirements on Unit 1; (3) remove the column "Testable During Plant Operation" from Table 3.6-1 for Unit 1: (4) allow valves SM-8 and SM-10 (upper containment grab samples) to be opened intermittently under administrative controls during power operation on Unit 2 (5) correct valve designations in Table 3.6-1 inadvertently overlooked in Amendment 47 on Unit 2, and (6) remove a footnote on Table 3.6-1 which is no longer applicable for Units 1 and 2.

Basis for proposed no significant hazards consideration determinations: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples ([FR 1987]). One of the examples (i) of an action not likely to involve a significant hazards consideration is a change to achieve consistency throughout the technical specifications, correction of an error, or change in nomenclature. The change numbers 3, 5, and 6 above are directly related to this example. In change number 3, removing the column entitled "Testable During Plant Operation" on Table 3.6-1 will make the Unit 1 and Unit 2 Technical Specification consistent and will not affect the testing of pumps and valves which is required by Section XI of the ASME Boiler and Pressure Vessel Code. The change in number 5 is to correct an inadvertent oversight in Amendment 47 issued December 8, 1982. This change will correct the valve designations only. The change in number 6 is to remove a footnote which applied only to the refueling outage in 1982, which has passed. The footnote is no longer applicable and its deletion will not effect the Technical Specifications in any substantial way. Another example (vii) of an action not likely to involve a significant hazard consideration is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The change numbers 1, 2, and 4 are directly related to this example. The change in number 1 is to make the Unit 1 and Unit 2 Technical Specifications consistent by adding a provision to Unit 1 which would allow locked, sealed or secured valves, flanges, or deactivated automatic valves inside containment to be verified as closed during cold shutdown rather than every 24 days. This provision was found to be acceptable for Unit 2, which was licensed at a later date, and the Unit 1 acceptance would be to the same criteria as used for Unit 2. The change in number 2 will delete the reference in the surveillance for requiring one complete cycle of full travel test on containment isolation valves (power operated or/automatic valves). By deleting this reference, the requirements of Section XI of the ASME Boiler and Pressure Vessel Code will govern the testing as it pertains to cycle testing. The Section XI criteria was acceptable for Unit 2; Unit 1 is proposed to be consistent with Unit 2 with the same acceptance criteria. The change in number 4 will permit upper containment grab sample lines to be intermittently opened under administrative control during operation rather than requiring personnel to enter containment for the samples. This operation was previously allowed for Unit 1. The criteria found acceptable for Unit 1 is to be applied to Unit 2 so that the Technical Specifications for both Units will be consistent. On the basis of the above, the Commission proposes to conclude that the proposed changes to the Technical Specifications involves a no significant hazards consideration.


NRC Branch Chief: Steven A. Varga.

Iowa Electric Light and Power Company, Docket No. 59-331, Duane Arnold Energy Center, Linn County, Iowa.

Date of amendment request: October 5, 1984.

Description of amendment requests: The proposed amendment request results from the Iowa Electric Light and Power Company (licensee) commitment to modify the Duane Arnold Energy Center (DAEC) automatic depressurization system (ADS) logic. The present ADS configuration will require manual actuation of the ADS in accidents which do not involve a high containment pressure. The proposed change would require automatic actuation of the ADS without the presence of containment high pressure. A manual override switch is provided to permit the operators to override the automatic ADS actuation if the operators determine that ADS actuation is not needed. The proposed request will add the testing requirement for the manual override switch to the Technical Specifications. The operation of the facility in the proposed manner would result in automatic initiation of the blowdown where manual blowdown was permitted by the plant.
The licensee has completed the Long Term Mark I modifications and has performed its plant unique analyses by assuming absence of any differential pressure between the drywell and the wetwell. Analysis results of the analyses show that the requisite safety margins have been restored as a result of the Long Term Program, and elimination of the differential pressure systems is justified. The licensee has therefore proposed changes to the Technical Specifications reflecting the elimination of the drywell and wetwell differential pressure system.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance for the application of the criteria in 10 CFR 50.52 by providing examples of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870). One such example is (ii), a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

The licensee’s proposed change to permit automatic initiation of blowdown without the containment high pressure signal, and add the testing of the manual override switch during surveillance constitute additional limitations being included in the DAEC Technical Specifications. The proposed changes are, therefore, encompassed by the above Commission example of actions that have been found to involve no significant hazards considerations.

Therefore, since the proposed changes to the Technical Specifications result from the licensee’s intention to eliminate the drywell/wetwell differential pressure system and would result in some relaxation of the present Technical Specifications. However, operation of the DAEC in the proposed manner would still lie clearly within all acceptable criteria of the Standard Review Plan.

**Local Public Document Room**

**Location:** Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.


**NRC Branch Chief:** Domenic B. Vassallo.

**Iowa Electric Light and Power Company,**

**Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

**Date of amendment request:** October 17, 1984.

**Description of amendment request:** The amendment would add action statements to the Duane Arnold Energy Center (DAEC) Technical Specifications Sections 3.5.H and 3.7.C. Section 3.5.H requires the emergency core cooling system (ECCS) pump discharge systems be kept filled but does not provide any guidance on the duration of time in which the requirement should be met if the pump discharge piping is found not to be filled. The proposed change would require that the required condition be restored in one hour. Similarly, Specification 3.7.C.1 requires that the secondary containment integrity be maintained. The action statement 3.7.C.2 requires that, in the event 3.7.C.1 cannot be met, several actions are to be taken but does not specify the duration of time in which the containment integrity may be restored without entering the action statement 3.7.C.2. The proposed change will allow one hour to restore the secondary containment integrity prior to taking the actions specified in Section 3.7.C.2.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered likely or not likely to involve significant hazards considerations (48 FR 1470). One such example involving no significant hazards consideration is a change which either may result in some increase in the probability or consequences of a previously analyzed accident, or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the systems or components specified in the Standard Review Plan.

The proposed changes to the Technical Specifications result from the licensee’s intention to eliminate the drywell/wetwell differential pressure system, and would result in some relaxation of the present Technical Specifications. However, operation of the DAEC in the proposed manner would still lie clearly within all acceptable criteria of the Standard Review Plan.

**Local Public Document Room**

**Location:** Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.


**NRC Branch Chief:** Domenic B. Vassallo.

**Federal Register**

**Vol. 49, No. 252 / Monday, December 31, 1984 / Notices**

**Date of amendment request:** October 17, 1984.

**Description of amendment request:** The amendment would add action statements to the Duane Arnold Energy Center (DAEC) Technical Specifications Sections 3.5.H and 3.7.C. Section 3.5.H requires the emergency core cooling system (ECCS) pump discharge systems be kept filled but does not provide any guidance on the duration of time in which the requirement should be met if the pump discharge piping is found not to be filled. The proposed change would require that the required condition be restored in one hour. Similarly, Specification 3.7.C.1 requires that the secondary containment integrity be maintained. The action statement 3.7.C.2 requires that, in the event 3.7.C.1 cannot be met, several actions are to be taken but does not specify the duration of time in which the containment integrity may be restored without entering the action statement 3.7.C.2. The proposed change will allow one hour to restore the secondary containment integrity prior to taking the actions specified in Section 3.7.C.2.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered likely or not likely to involve significant hazards considerations (48 FR 1470). One such example involving no significant hazards consideration is a change which either may result in some increase in the probability or consequences of a previously analyzed accident, or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the systems or components specified in the Standard Review Plan.
are, therefore, viewed by the staff as a relaxation of the present Technical Specifications. However, operating in the proposed manner would still clearly be within all acceptable criteria with respect to systems or components specified in the Standard Review Plan sections 6.3 and 6.23, and would therefore be encompassed by the above cited example.

Therefore, since the application for amendment involves proposed changes similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.


NRC Branch Chief: Domenic B. Vassallo.

Mane Yankee Atomic Power Company, Docket No. 50-309, Mane Yankee Atomic Power Station, Wiscasset, Maine.

Date of amendment request: November 6, 1984.

Description of amendment request:
This proposed change would require that administrative procedures be developed and implemented to control the overtime of certain operating personnel. This proposal would partially implement the Commission's policy concerning staff overtime limits at nuclear plants.

Also included in this proposed change is a modification to Figure 5.2-2, the Facility Organization chart. This change is to add a footnote to the Nuclear Safety Engineering position assigning functional reporting.

Basis for proposed no significant hazards consideration determination:
The portion of this proposed change concerning the limitation of personnel overtime represents an additional restriction being added to the Technical Specifications. This meets example (ii) (48 FR 14870) of the Commission's examples of amendments considered not likely to involve a significant hazards consideration.

The portion of this proposed change concerning changes to Figure 5.2-2 is an administrative change. This meets example (i) (48 FR 14870) of the Commission's examples of amendments considered not likely to involve a significant hazards consideration.

Based upon the above, the Commission proposes to determine that this proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritcher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Memaha County, Nebraska.

Date of amendment request: October 5, 1984, as supplemented by submittal dated October 29, 1984.

Description of amendment request:
The proposed amendment would revise the Technical Specifications (TS) for (1) Shock Suppressors (Snubbers) in Sections 3.4.5.A and 6.4.2.C, and (2) Four-Inch Recirculation Bypass Lines in Section 3.4.5.A.

(1) Shock Suppressors (Snubbers)
The proposed changes to the snubber TS conform to guidance provided by the Commission in its letter dated May 3, 1984 (Generic Letter 84-13). That is, the tables listing the hydraulic and mechanical snubbers which are required to be operable would be deleted. Also, the reference to the tables in Sections 3.4.6.H and 6.4.2.C would be deleted. In lieu of the listing of individual snubbers, Section 3.6.H.1 would be changed to specify the types of snubbers which are required to be operable. One result of these changes would be to eliminate the need for frequent TS amendments to incorporate changes to the snubber listing tables. Any future changes in snubber quantities, types or locations would be a change to the facility and as such would be subject to the provisions of 10 CFR Part 50.59.

(2) Four-Inch Recirculation Bypass Lines
The proposed changes to Section 3/4.5.A would delete the requirements to verify the operability of the valves in the four-inch recirculation pump discharge valve bypass lines. The bypass lines were originally provided to facilitate the controlled heat-up of the recirculation system discharge piping following a loop shutdown. In the October 5, 1984 application the licenses stated that the conditions under which the bypass lines would be used have not occurred to date and are not expected to be encountered in the future. In addition, alternate means are available to meet loop heat-up requirements. Therefore, because the lines are not required and because bypass line cracking has occurred in other boiling water reactors, the license will remove the four-inch bypass lines and associated valves during the recirculation system piping replacement program in the current outage.

Basis for proposed no significant hazards consideration determination:
(1) Shock Suppressors (Snubbers)
The proposed amendment would not change the intent of the Technical Specifications. Previously the staff has evaluated the inclusion of the snubber listings in the Technical Specifications and has concluded that such listings are not necessary provided the snubber Technical Specifications are not being altered by this revision. Further, the plant records must contain a record of the service life, installation date, etc. of each snubber. Since any change in snubber quantities, types, or locations would be a change to the facility, such changes would be subject to the provisions of 10 CFR 50.59 and, of course, these changes would have to be reflected in the records required. On May 3, 1984 the staff sent a letter to all licensees which indicated the above conclusion regarding inclusion of snubber tables in the Technical Specifications and indicated that such changes were not required but that the licensees could choose to request an amendment to delete the tabular listing of snubbers.

Based on the above discussion and the fact that the deletion of the snubber table with the associated requirements is consistent with guidance provided to the licensees, the staff concludes that removal of the snubber tables under those circumstances would not involve a significant increase in the probability or consequences of an accident previously evaluated; or (3) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Having made this finding the Commission proposes to determine that the application does not involve a significant hazards consideration.

(2) Four-Inch Recirculation Bypass Lines
The four-inch recirculation pump discharge valve bypass line and associated valves are not needed for recirculation system operation. At present, the only TS requirements relative to the bypass valves are the operability requirements in Section 3/4.5.A. Verification of bypass valve operability is required prior to startup because the bypass valves must be able to shut automatically in the event of a
loss-of-coolant accident. Valve position for other plant conditions is not specified. Therefore, the staff concludes that removal of the bypass lines and valves from the recirculation system and deletion of the valve operability requirements would not: (1) 

The design of the outage door assures that releases of radioactive material within the containment will be restricted from leaking to the environment. Therefore, the proposed change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. Having made this finding the Commission proposes to determine that the application does not involve a significant hazards consideration.

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5. Page 3/4, add ACTION d. to read, “With one scram discharge volume vent valve and/or one scram discharge volume drain valve inoperable and open, restore the inoperable valve(s) to OPERABLE status within 24 hours or be at least HOT SHUTDOWN within the next 12 hours.” This change corrects a deficiency in the TS.

6. Page 3/4, add ACTION a. to read, “With any scram discharge volume vent valve(s) and/or any scram discharge volume drain valve(s) otherwise inoperable, restore at least one vent valve and one drain valve to OPERABLE status within 8 hours or be at least HOT SHUTDOWN within the next 12 hours.” This change corrects a deficiency in the TS.

7. Page 3/4, change Technical Specification 4.1.3.1.b. to read, “Proper float response by verification of power float switch activation after each scram from a pressurized condition greater than or equal to 900 psig” to clarify the method of testing to meet NRC requirements. Add footnote clarifying Operational Condition 2.

8. Page 3/4, change Technical Specification 4.1.3.1.b. to read, “Proper float response by verification of power float switch activation after each scram from a pressurized condition greater than or equal to 900 psig” to clarify the method of testing to meet NRC requirements. Add footnote clarifying Operational Condition 2.

9. Page 3/4, change Technical Specification 4.1.3.1.b. to read, “Proper float response by verification of power float switch activation after each scram from a pressurized condition greater than or equal to 900 psig” to clarify the method of testing to meet NRC requirements. Add footnote clarifying Operational Condition 2.


11. Pages 3/4 and 3/4, change ACTION, add, “b. The provisions of Specification 3.0.4 are not applicable.” This change is provided to achieve consistency with Technical Specification 3.1.3.1.

12. Page 3/4–6, change beginning of ACTION statement to read, “a. With the average scram insertion, ” as editorial correction.

13. Pages 3/4–6, change ACTION statement to read, “a. With the average scram insertion, ” as editorial correction.

provisions of Specification 3.0.4 are not applicable." These changes are provided to achieve consistency with Technical Specification 3.3.1.1.

15. Page 3/4 1–10, change, Technical Specification 4.1.3.5.b.1.b to read: "alarm setpoint of (greater than or equal to) 940 psig on decreasing pressure" to provide operational flexibility and more advanced warning of degraded condition.

16. Page 3/4 3–7, under the CHANNEL CALIBRATION column for FUNCTIONAL UNIT 1.a., change "R" to "SA" (twice) to increase the frequency of calibration consistent with other TS for the same instrumentation.

17. Page 3/4 3–7, under CHANNEL FUNCTIONAL TEST column for FUNCTIONAL UNIT 1.b. and 2.d, add "S/U" for consistency with the same requirement in another TS.

18. Page 3/4 3–7, for FUNCTIONAL 

1.4, change "NA" to read "S" under the CHANNEL CHECK column and change "C" to read "D" under the CHANNEL CALIBRATION column. This change adds requirements consistent with BWR Standard Technical Specifications.

20. Page 3/4 3–6, in note (g), change to read: "flow at the existing loop flow" to clarify testing performed.

21. Page 3/4 3–11, under TRIP FUNCTION 1., add "d. SGTS Exhaust Radiation-High" with "R" under the ISOLATION SIGNAL column, "1" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3,4**, 5*** under the APPLICABLE OPERATION CONDITION column, and "29" under the ACTION column to add requirements for the containment isolation features.

22. Page 3/4 3–11, under TRIP FUNCTION 1., add "e. Main Steam Line Radiation-High" and "C" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "29" under the ACTION column to add requirements for the containment isolation features.

23. Page 3/4 3–11, under the ISOLATION SIGNAL column for TRIP FUNCTION 2.a. and 2.b., change both to read: "This change clarifies that the isolation signal for these two functions affect only those components listed in Table 3.6.5.2-1.

24. Page 3/4 3–12, under TRIP FUNCTION 3.f., change to read, "Reactor Building Main Steam Line Tunnel Temperature—High" with "Z" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column changed from "2/7" to read "2." This change adds a requirement for more accurate description and corrects an error in the description of channels.

25. Page 3/4 3–12, under TRIP FUNCTION 3.g., change to read, "Reactor Building Main Steam Line Tunnel (Delta) Temperature-High." This also changes the title of a function for greater accuracy.

26. Page 3/4 3–12, under TRIP FUNCTION 3., add, "l. Turbine Building Main Steam Line Tunnel Temperature—High" with "S" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "21" under the ACTION column. This adds a design function not previously contained in the TS.

27. Page 3/4 3–12, for TRIP FUNCTION 4.d, change "(d)" to read "(l)" under the ISOLATION SIGNAL column, and change "NA" to read "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column. These changes clarify and correct descriptions of the SLCS initiation.

28. Page 3/4 3–13, under the ISOLATION SIGNAL column, change "K" to read "KB" for TRIP FUNCTION 5.b. This change is a nomenclature change to specify affected values and to achieve consistency between Tables 3.3.2-1 and 3.6.3-1.

29. Page 3/4 3–13, under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, change "1/ value" to read, "1/" for TRIP FUNCTION 6.g. and 6.h. These changes clarify the specific requirements.

30. Page 3/4 3–13, under TRIP FUNCTION 5., add, "j. Drywell Pressure—High" with "Z" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "23" under the ACTION column. This addition was made for clarity and consistency with similar requirements.

31. Page 3/4 3–14, under the ISOLATION SIGNAL column, change "L" to read "LB" for TRIP FUNCTION 6.b. This change is a nomenclature change to achieve consistency between Tables 3.3.2-1 and 3.6.3-1.

32. Page 3/4 3–14, under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, change "1/ value" to read, "1/" for TRIP FUNCTION 6.g. and 6.h. These changes clarify the specific requirements.

33. Page 3/4 3–14, under TRIP FUNCTION 6., add, "i. Drywell Pressure—High" with "Z" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "23" under the ACTION column. This addition is made for clarity and consistency with similar requirements.


36. Page 3/4 3–15, under TRIP FUNCTION 7., add, "g. Drywell Pressure—High" with "Z" under the ISOLATION SIGNAL column, "Z" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "26" under the ACTION column for clarify and consistency with other requirements.

37. Page 3/4 3–16, delete footnotes (c) and (d) to remove extraneous information and change nomenclature.

38. Page 3/4 3–16, add footnote "** ** * When VENTING OR PURGING the drywell per Specification 3.1.1.2.8" to clarify the added function i.e. in Table 3.3.2-1.

39. Page 3/4 3–17, under TRIP FUNCTION 1., add, "d. SGTS Exhaust Radiation-High" with "R" under the ISOLATION SIGNAL column, "1" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3,4**, 5*** under the APPLICABLE OPERATION CONDITION column, and "29" under the ACTION column to add requirements for the containment isolation features.

40. Page 3/4 3–17, under TRIP FUNCTION 1., add "e. Main Steam Line Radiation—High" with "S" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "23" under the ACTION column. This addition was made for clarity and consistency with similar requirements.

41. Page 3/4 3–17, under TRIP FUNCTION 2.e., change from "(less than or equal to) 2.5 R/hr" ** to read "(less than or equal to) 2.5 mR/hr" ** to correct a typographical error.

42. Change TRIP FUNCTION 3.f. and 3.g. to read, "Reactor Building Main Steam Line Tunnel Temperature—High" with "S" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "23" under the ACTION column. This change clarifies the requirements for containment isolation.

43. Page 3/4 3–17, under TRIP FUNCTION 1., add "d. SGTS Exhaust Radiation—High" with "R" under the ISOLATION SIGNAL column, "1" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3,4**, 5*** under the APPLICABLE OPERATION CONDITION column, and "29" under the ACTION column to add requirements for the containment isolation features.

44. Page 3/4 3–17, under TRIP FUNCTION 1., add "e. Main Steam Line Radiation—High" with "S" under the ISOLATION SIGNAL column, "2" under the MINIMUM OPERABLE CHANNELS PER TRIP SYSTEM column, "1,2,3" under the APPLICABLE OPERATION CONDITION column, and "23" under the ACTION column. This change clarifies the requirements for containment isolation.

45. Page 3/4 3–17, under TRIP FUNCTION 2.e., change from "(less than or equal to) 2.5 R/hr" ** to read "(less than or equal to) 2.5 mR/hr" ** to correct a typographical error.
43. Page 3/4 3-18, under TRIP FUNCTION 3., add “i. Turbine Building Main Steam Line Tunnel Temperature—High” with “[less than or equal to] 177°F” under the CHANNEL SETPOINT column and “[less than or equal to] 184°F” under the ALLOWABLE VALUE column to provide supporting setpoint information.
44. Page 3/4 3-19, under TRIP FUNCTION 5. and 6., add “j. Drywell Pressure—High” with “[less than or equal to] 1.72 psig” under the TRIP SETPOINT column and “[less than or equal to] 1.88 psig” under the ALLOWABLE VALUE column to provide supporting setpoint information.
45. Page 3/4 3-20, under TRIP FUNCTION 7., add “g. Drywell Pressure—High” with “[less than or equal to] 1.72 psig” under the TRIP SETPOINT column and “[less than or equal to] 1.88 psig” under the ALLOWABLE VALUE column to provide supporting setpoint information.
46. Page 3/4 3-21, under TRIP FUNCTION 1., add “d. SGTS Exhaust Gaseous Radiation—High (b)” with “[less than or equal to] 10 (10)” under the RESPONSE TIME column to reflect actual plant construction.
47. Page 3/4 3-21, under TRIP FUNCTION 1., add “e. Main Steam Line Tunnel Temperature—High” with “NA” under the CHANNEL CHECK column “M” under the CHANNEL FUNCTIONAL TEST column, “Q” under the CHANNEL CALIBRATION COLUMN, and “1,2,3” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to clarify the trip functions.
48. Page 3/4 3-21, under TRIP FUNCTION 3., add “i. Turbine Building Main Steam Line Tunnel Temperature—High” with “NA” under the CHANNEL CHECK column “M” under the CHANNEL FUNCTIONAL TEST column, “Q” under the CHANNEL CALIBRATION COLUMN, and “1,2,3” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to clarify the trip functions.
49. Page 3/4 3-21, under TRIP FUNCTION 5., add “j. Drywell Pressure—High” “[less than or equal to] 10 (10)” under the RESPONSE TIME column for clarity and consistency with other requirements.
50. Page 3/4 3-22, under TRIP FUNCTION 8., add “j. Drywell Pressure—High” “[less than or equal to] 10 (10)” under the RESPONSE TIME column for clarity and consistency with other changes.
51. Page 3/4 3-22, under TRIP FUNCTION 7., add “g. Drywell Pressure—High” “[less than or equal to] 10 (10)” under the RESPONSE TIME column for clarity and consistency with other changes.
52. Page 3/4 3-23, under TRIP FUNCTION 1., add “d. SGTS Exhaust Gaseous Radiation—High” with “S” under the CHANNEL CHECK column “M” under the CHANNEL FUNCTION TEST column, “R” under the CHANNEL CALIBRATION column, and “1,2,3,4,5” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to clarify the trip functions.
53. Page 3/4 3-23, under TRIP FUNCTION 1., add “e. Main Steam Line Tunnel High” with “S” under the CHANNEL CHECK column, “M” under the CHANNEL FUNCTIONAL TEST column, “R” under the CHANNEL CALIBRATION column, and “1,2,3” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to clarify the trip functions.
54. Page 3/4 3-24, under TRIP FUNCTION 3., add “i. Turbine Building Main Steam Line Tunnel Temperature—High” with “NA” under the CHANNEL CHECK column “M” under the CHANNEL FUNCTIONAL TEST column, “Q” under the CHANNEL CALIBRATION COLUMN, and “1,2,3” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to clarify the trip functions.
55. On pages 3/4 3-25 and 3/4 3-26, as item 1. under TRIP FUNCTION 5. and 6. and as item g. under TRIP FUNCTION 7., add “Drywell Pressure—High” with “NA” under the CHANNEL CHECK column “M” under the CHANNEL FUNCTIONAL TEST column, “Q” under the CHANNEL CALIBRATION COLUMN, and “1,2,3” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to add a design function not previously indicated.
56. On pages 3/4 3-25 and 3/4 3-26, as item 1. under TRIP FUNCTION 5. and 6. and as item g. under TRIP FUNCTION 7., add “Drywell Pressure—High” with “NA” under the CHANNEL CHECK column “M” under the CHANNEL FUNCTIONAL TEST column, “Q” under the CHANNEL CALIBRATION COLUMN, and “1,2,3” under the OPERATIONAL CONDITIONS FOR WHICH SURVEILLANCE REQUIRED column to clarify and consistency.
57. Under TRIP FUNCTION 2.c. add “1) System Initiation” and “2) Recirculation Discharge Valve Closure” and transfer the current information under the remaining columns of TRIP FUNCTION 2.c. to each of TRIP FUNCTION 2.c.1 and 2.c.2, on pages 3/4 3-29 and 3/4 3-34 to add a safety function.
58. Page 3/4 3-31, under TRIP FUNCTION 2.c., add “1) System Initiation” and transfer the current information under the remaining columns of TRIP FUNCTION 2.c. to TRIP FUNCTION 2.c.1 to provide supporting setpoint information.
59. Page 3/4 3-31, under TRIP FUNCTION 2.c., add “2) Recirculation Discharge Valve Closure” with “[greater than or equal to] 239 psig,” decreasing under the TRIP SETPOINT column and “[greater than or equal to] 216 psig,” decreasing under the ALLOWABLE VALUE column to provide supporting setpoint information.
60. Page 3/4 3-32, under the ALLOWABLE VALUE column for TRIP FUNCTION 5.c, change “99.5±7.1 volts” to read “99.5±7.1 volts,—1.09 volts.” This corrects an error and provides tighter tolerance to support degraded grid voltage study.
61. Page 3/4 3-34, under TRIP FUNCTION 3.d. change “[greater than or equal to] 3 cps” to read “[greater than or equal to] 0.7 cps” and change “[greater than or equal to] 2 cps” to read “[greater than or equal to] 0.5 cps” to comply with NRC resolution of appropriate setpoints.
63. Page 3/4 3-35, under the CHANNEL FUNCTIONAL TEST column, change “M” to read “W” for TRIP FUNCTION 2.a., 2.b., 2.c. and 2.d. for consistent surveillance requirements.
64. Page 3/4 3-35, under the CHANNEL CALIBRATION column, change “Q” to read “SA” for TRIP FUNCTION 1.a., 1.c., 3.b., 3.d., 4.b. and 4.d. and change “R” to read “SA” for TRIP FUNCTION 2.a., 2.c. and 2.d. This change provides consistency between Technical Specification Tables 4.3.1.1-1 and 4.3.6-1.
65. Page 3/4 3-39, in ACTION 71, change to read, “With the required monitor inoperable, assure a portable continuous monitor with the same alarm setpoint is OPERABLE in the vicinity of the installed monitor during any fuel movement. If no fuel movement is being made, perform area surveys This change provides for continuous monitoring rather than daily surveys.
66. Page 3/4 3-70, change APPLICABILITY statement to read, “As shown in Table 3.3.7.5-1.” for clarity.
67. Page 3/4 3-71, add a new column titled “APPLICABLE OPERATIONAL CONDITIONS” and under this column add “12” for INSTRUMENT 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11.c. and add “12 and *” for INSTRUMENT 11.a. and 11.b. to comply with NRC generic letter 63-38.
68. Page 3/4 3-71, for INSTRUMENT 8, change to read, “Drywell Gaseous Analyzer.” to comply with NRC generic letter 83-56.
69. Page 3/4 3-71, under INSTRUMENT 8, add “a. Oxygen” and transfer the current information under the remaining columns of INSTRUMENT 8. to INSTRUMENT 8.a., and add “1#,” “2#” and under the APPLICABLE
OPERATIONAL CONDITIONS column for INSTRUMENT 8a. to comply with generic letter 83-36.

70. Page 3/4 3-71, under INSTRUMENT 8, add "b. Hydrogen" with "2" under the REQUIRED NUMBER OF CHANNELS column, "1" under the MINIMUM CHANNELS OPERABLE column, "82" under the ACTION column, and "15, 29" under the APPLICABLE OPERATIONAL CONDITIONS column to comply with letter 83-36.

71. Page 3/4 3-71, change INSTRUMENT 11, to read, "Noble gas monitors** and add the associated footnote to read, ***Mid-range and high-range channels." to comply with letter 83-36.

72. Page 3/4 3-71, add footnote "***When moving irradiated fuel in the secondary containment" and footnote "1 See Special Test Exception 3.3.1.1." Footnote** is added to be consistent with guidance in NRC Generic Letter 63-36. Footnote # is added to achieve consistency within the Technical Specifications.

73. Page 3/4 3-72, change ACTION 81 to read, "With the number of OPERABLE channels less than required by the Minimum Channels OPERABLE requirement, initiate the preplanned alternate method of monitoring the appropriate parameter(s) within 72 hours, and if 1. either restore the inoperable channel(s) to OPERABLE status within 7 days of the event, or 2. Prepare and submit a Special Report to the Commission pursuant to Specification 6.5.2 within 14 days following the event outlining the action taken, the cause of inoperability, and the plans and schedule for restoring the system to OPERABLE status. This change is added to be consistent with guidance in NRC Generic Letter 83-36.

74. Page 3/4 3-72, add ACTION 82 to read "a. With the number of OPERABLE channels one less than the Required Number of Channels shown in Table 3.3.7.5-1, restore the inoperable channel to OPERABLE status within 30 days or be m at least HOT SHUTDOWN within the next 12 hours." and "b. With the number of OPERABLE channels less than the Minimum Channels OPERABLE requirements of Table 3.3.7.5-1, restore at least one channel to OPERABLE status within 7 days or be at least HOT SHUTDOWN within the next 12 hours." This change is added to be consistent with guidance in NRC Generic Letter 83-36.

75. Page 3/4 3-73, change footnote* to read, "For hydrogen analyzer, use sample gas containing a. Nominal zero volume percent hydrogen, balance nitrogen. b. Nominal thirty volume percent hydrogen, balance nitrogen." to provide appropriate design calibration information.

76. Page 3/4 3-73, under the CHANNEL CALIBRATION column for INSTRUMENT 10, change "R" to read "R*** and add the associated footnote to read, *** CHANNEL CALIBRATION shall consist of an electronic calibration of the channel, not including the detector, for range decades above 10 R/hr and a one point calibration check of the detector below 10 R/hr with an installed or portable gamma source." The change is consistent with guidance provided in NRC Generic Letter 63-36.

77. Page 3/4 3-74, change Technical Specification 4.3.7.1.c. to read, " a. SMB count rate is at least 0.7 cps*** with the detector fully inserted and change the associated footnote to read, *** Provided signal-to-noise ratio is (greater than or equal to) 2. Otherwise, 3 cps to comply with NRC generic resolution of appropriate setpoints.

78. Page 3/4 3-75, change Technical Specification 3.3.7.2.c. to read, "Fire movable detectors, drives...

79. Page 3/4 3-76 through 3/4 3-60, Table 3.3.7.9-1, Fire Detection Instrumentation, would be revised and updated based on design review.

80. Page 3/4 3-82, change footnote* to read, "Sample pump flow low, high radiation alarm; radiation monitor failure; Unit 1 cooling tower blowdown low flow or Unit 2 cooling tower blowdown low flow." to add information of required interlocks.

81. Page 3/4 3-67, under MINIMUM CHANNELS OPERABLE column for INSTRUMENT 1a, change "2" to read "1 operating train" to reflect the actual construction and to comply with NRC requirements.

82. Page 3/4 3-69, change footnote== to read, "Low-range channel of monitor only." This change provides consistency between Technical Specification Tables 3.3.7.5-1 and 3.3.7.11-1.

83. Page 3/4 3-69, change ACTION 116 to read, "Minimum Channels OPERABLE requirement, effluent releases via this pathway may continue for up to 30 days provided grab samples are taken at least once per 4 hours and these samples are analyzed for gross activity within 24 hours." to allow controlled grab sampling in lieu of minimum operable channels.

84. Page 3/4 3-94, change Technical Specification 3.3.8 to read, "The turbine overspeed protection..." to provide clarity.

85. Page 3/4 4-5, change Technical Specification 4.4.2.2 to read, "verified to be 0.25 of the full open nose level for performance..." to ensure proper operation of the safety relief valve acoustic monitors.

86. Page 3/4 4-6, change Technical Specification 3.4.3.1.b. to read, "Two drywell floor drain sump level channels or the flow rate monitoring system, and..." as design improvement.

87. Page 3/4 4-6, change Technical Specification 4.4.3.1.b to read, "...drum sump level or flow rate monitoring system-performance..." as design improvement.

88. Page 3/4 4-7, change ACTION c. to read, "...within 4 hours by use of at least one close manual or deactivation..." to reflect design capability.

89. Page 3/4 4-8, change Technical Specification 4.4.3.2.1.b. to read, "...floor drum sump level or flow rate at least once..." to reflect design improvement.

90. Page 3/4 4-8, under Technical Specification 4.4.3.2.1. add "c. Determining the total IDENTIFIED LEAKAGE at least once per 24 hours" to ensure compliance with associated LCO.

91. Page 3/4 5-3, add ACTION g. to read, "With the condensate transfer pump discharge low pressure alarm instrumentation inoperable, monitor the CSS, LFCL, and HPCL pressure locally at least once per 24 hours." This change provides alternate monitoring for function support.

92. Page 3/4 5-5, in Technical Specification 4.5.1.2.1b, change to read, "Manually... opening each ADS valve..." and add the associated footnote to read, ****ADS solenoid energization shall be used alternating between ADS Division 1 and ADS Division 2" to clarify the surveillance required.

93. Page 3/4 5-5, in Technical Specification 4.5.1, add "e. During the first simultaneous shutdown of Units 1 and 2 of duration greater than 7 days that occurs more than 5 years following the previous testing, the following shall be accomplished:

1. A function test of the interlocks associated with LFCL and CS pump starts in response to an automatic initiation signal in Unit 1 followed by a "False" automatic initiation signal in Unit 2.

2. A functional test of the interlocks associated with LFCL and CS pump starts in response to an automatic initiation signal in Unit 2 followed by a..."
3. Functional test of the interlocks associated with LPCI and CS pump starts in response to simultaneous occurrence of an automatic initiation signal in both Unit 1 and Unit 2 and a Loss-of-Offsite-Power condition affecting both Unit 1 and Unit 2. This change improves the level of safety during operation by providing additional surveillance.

94. Page 3/4 6-10, in Technical Specification 4.6.1.7, add "**** before items c. and d. and add the associated footnote to read, "**Measurements taken at these elevations will only contribute to this change clarifies the averaging method to be more conservative to avoid interpretive problems.

95. Page 3/4 6-11, in Technical Specification 3.6.1.6, change to read "**** denerting or pressure control * provided that ** for clarity."

96. Page 3/4 6-11, in Technical Specification 4.6.1.6.1, change to read, "**** hours in the previous 365 days."**** and add the associated footnote to read, "**** Valves open for pressure control are not subject to the 90 hour per 365 day limit provided the 2-inch bypass line is being utilized."**** to comply with the intent of the 90 hour restriction.

97. Page 3/4 6-12, change ACTION b.2. to read, "****With the suppression chamber operating cooling mode to correct an inconsistency between the technical specifications.

98. Page 3/4 6-13, change ACTION c. to read, "****indicator OPERABLE and/or with less than eight suppression pool water temperature indicators covering at least six locations OPERABLE, restore.** This change is made to achieve consistency with Technical Specification Table 3.3.7.5-1.

99. Page 3/4 6-13, change ACTION d. to read, "****indicators OPERABLE and/or with less than one suppression pool water temperature indicator at at least six different locations OPERABLE, restore at least one water temperature indicator at least six different locations OPERABLE to OPERABLE status within 48 hours or be in ** This change is made to achieve consistency with Technical Specification Table 3.3.7.5-1.

100. On pages 3/4 6-15 and 3/4 6-16, change Technical Specifications 6.2.2.6. and 6.2.3.2. respectively, to read, "****One OPERABLE RHR pump, and** this is an administrative change to correct a typographical error.

101. Page 3/4 6-17, under ACTION a., add 4. to read, "****The provisions of Specification 3.0.4 are not applicable provided that within 4 hours the affected penetration is isolated in accordance with ACTION c.2. or c.3. above, and provided that the associated system, if applicable, is declared inoperable and the appropriate ACTION statements for that system are performed.** This change adds Specification 3.0.4 which is not applicable to clarify that the valves, when closed, maintain containment integrity and shall not be operable.

102. Pages 3/4 6-19 through 3/4 6-23, Table 3.6.3-1, Primary Containment Isolation Valves, are revised to be consistent with Table 3.3.5-1, to remove ambiguous nomenclature, and to add isolation valve signal consistent with regulatory requirements, and to correct typographical errors.

103. Page 3/4 6-32, in Technical Specification 4.6.5.2.b., change to read, "****At least once per 18 months This change is a clarification of intent since cold shutdown or refueling is not a necessary condition to perform the surveillance.

104. Page 3/4 6-33, Table 3.6.5.2-1, Secondary Containment Ventilation System Automatic Isolation Dampers, is revised to add dampers supporting the redefinition of Secondary Containment from previously approved standby gas system modifications in order to accommodate two-unit operation. 105. Page 3/4 7-1, under ACTION a.2., change to read, "****In COLD SHUTDOWN **** with the ** and change the associated footnote from "**** to ** * **** six different locations to OPERABLE status within 48 hours or be in ** This change is made to achieve consistency with Technical Specification Table 3.3.7.5-1 and provides operational flexibility.

106. Page 3/4 7-1, in Technical Specification 3.7.1.1, change APPLICABILITY to read, "OPERATIONAL CONDITIONS 1, 2, 3, 4, and 5** " and add footnote to read, "**** See Specifications 3.8.1.1 and 3.3.1.2 for applicability.** This change is provided to achieve consistency between Technical Specifications and provides operational flexibility.

107. Page 3/4 7-2, change ACTION a.3. to read, "**** system loop otherwise inoperable, restore **.** The word otherwise has been added to provide clarity for the operator. 108. Page 3/4 7-2, change ACTION b. to read, "****in OPERATIONAL CONDITION 4, 5 or ** **.** 1. With one pump in an emergency service water system loop inoperable, verify adequate cooling capability remains available for the diesel generators required to be operable by Specification 3.8.1.2 or declare the affected diesel generator(s) inoperable and take the ACTION required by Specification 3.8.1.2.

2. With two pumps in an emergency service water system loop inoperable or with the loop otherwise inoperable declare the associated safety related equipment inoperable (except diesel generators), and follow the applicable ACTION statements. Verify adequate cooling remains available for the diesel generators required to be operable by Specification 3.8.1.2 or declare the affected diesel generator(s) inoperable and take the ACTION required by Specification 3.8.1.2.** To avoid a forced two-unit shutdown in order to perform surveillance. 109. Page 3/4 7-2, in Technical Specifications 4.7.1.2.b, change to read, "****At least once per 18 months by verifying that each automatic valve properly cycles to its proper position in its required time following receipt of an automatic pump start signal." This additional surveillance requirement ensures reliability of the valves.

110. Under Technical Specification 4.7.1.2, add c. to read, "****At least once per 18 months by verifying that each automatic valve properly cycles to its proper position in its required time following receipt of an automatic pump start signal." This additional surveillance requirement ensures reliability of the valves.

111. Page 3/4 7-7, under Technical Specification 3.7.3, revised ACTION statement to read, "****With the RCIC system otherwise inoperable, operation ** ** and add e. With the condensate transfer pump discharge low pressure alarm instrumentation inoperable, monitor the CSS, LPCI, HPCI, and RCIC pressure locally at least once per 24 hours** to provide an alternate method of monitoring and operational flexibility.

112. Page 3/4 7-8, under Technical Specification 4.7.3, add d. to read, "****In the event the RCIC system is actuated and injects water into the reactor coolant system, a Special Report shall be prepared and submitted to the Commission pursuant to Specification 6.9.2 within 90 days describing the circumstances of the actuation and the total accumulated actuation cycles to date. The current value of the usage factor for each affected injection nozzle shall be provided in this Special Report whenever its value exceeds 0.7.**
provide consistency within the technical specifications.

113. Pages 3/4 7–9 through 3/4 7–12, regarding the inspection, testing and monitoring of safety-related snubbers would be revised to utilize an approved alternative acceptable surveillance criterion consistent with Susquehanna Unit 2 Technical Specifications.


115. Page 3/4 7–36, under Technical Specification 4.6.2.1.d. add “m. Fire Zone 0-20B” and “n. Fire Zone 0-30A” to be consistent with the design reviews.

116. Page 3/4 7–38, under Technical Specification 3.7.6.3, change g., h., and i., to h., i., and j., respectively; change e. to g.; add “e. South Cable Chases” and “h. Room C–412 Soffit” to be consistent with the design reviews.

117. Page 3/4 7–43, at end of Technical Specification 4.7.7.1.c., add “Sample shall be selected such that each penetration will be inspected every 15 years” to be consistent with NRC requirements ensuring proper selection of samples.

118. Page 3/4 8–4, under Technical Specification 4.8.1.1.2.d., change beginning to read, “At least once per 18 months by:” to avoid a forced two-unit shutdown in order to perform the surveillance.


120. Pages 3/4 8–5, and 3/4 8–8, under Technical Specification 4.8.1.1.2.d., renumber paragraphs 7., 8., 9., 10., and 11. as paragraphs 6., 7., 8., 9., and 10., respectively. This is an administrative change to correct the numbering in order to reflect a deletion.

121. Page 3/4 8–3, delete Technical Specification 4.8.1.1.5.d.12 to meet the intent of the NRC requirements. These requirements are covered by other Technical Specifications.


123. Page 3/4 8–8, under Technical Specification 4.8.1.1.2.e. change to read, “at least 600 rpm in less than or equal to 10 seconds,” to correct a typographical error.

124. Page 3/4 8–8, replace Table 4.8.1.1.2–2 with revised table to correct typographical errors and list timers in sequential order by time setting. Unit 2 loading timers have been added to the current table of Unit 1 timers to ensure Unit 2 activities will not affect Unit 1 operation.

125. Page 3/4 8–11, under Technical Specification 4.8.2.1.c.2, change to read, “There is correct breaker alignment to the battery chargers, and total battery terminal fuses. The breaker alignment to the battery chargers to better verify OPERABILITY.”

126. Page 3/4 8–12, in Technical Specification 5.8.2.1.d., change beginning to read, “At least once per 18 months by verifying that either:” The change is a clarification of intent since shutdown is not a necessary condition to perform the surveillance.

127. Page 3/4 8–13, in Technical Specification 4.8.2.1.e., change beginning to read, “At least once per 60 months by verifying...” The change is a clarification of intent since shutdown is not a necessary condition to perform the surveillance.

128. Page 3/4 8–17, in Technical Specification 3.8.3.1.1, under 1.c) and 2.c), change “IB219” and “IB233” respectively, to read, “IB219” and “IB233” and add footnote to read, “The associated swing bus automatic transfer switch shall be OPERABLE” by providing reference to the swing bus automatic transfer switch in the LCO provides an additional control.

129. Page 3/4 8–18, new: top of page, delete word “ACTION (Continued)” to provide consistency with the charge proposed in number 128.

130. Page 3/4 8–18, under ACTION, add c. to read, “With an A.C. power distribution system swing bus transfer switch inoperable, restore the inoperable bus transfer switch to OPERABLE status within 7 days, or be in at least HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours.” This change provides an appropriate action statement to support the proposed change in number 128.


132. Page 3/4 8–18, add Technical Specification 4.8.3.1.2 to read, “The A.C. power distribution system swing bus automatic transfer switches shall be demonstrated OPERABLE at least once per 31 days by actuating the load test switch or by disconnecting the normal power source to the transfer switch and verifying that swing bus automatic transfer is accomplished.” to provide consistency with the proposed change in number 128.

133. Page 3/4 8–19, under Technical Specification 3.8.3.2.a.1.c), change “IB219” to read “IB219**” and add the associated footnote to read, “** The associated swing bus automatic transfer switch shall be OPERABLE if LFCI pumps A and C alone are fulfilling the requirements of Specification 3.52.2” to provide consistency with the proposed change in number 128.

134. Page 3/4 8–19, under Technical Specification 3.8.3.2.a.2.c), change “IB233” to read “IB233**” and add the associated footnote to read, “** The associated swing bus automatic transfer switch shall be OPERABLE if LFCI pumps B and D alone are fulfilling the requirements of Specification 3.52.2” to provide consistency with the proposed change in number 128.

135. Page 3/4 8–23, redesignate Technical Specification 4.8.3.1.2.e. as Technical Specification 4.8.3.1.2.a. and change end of paragraph to read “...type have been functionally tested, or...” and provide consistency with the proposed change in number 128.

136. Page 3/4 8–23, under Technical Specification 4.8.3.1.2.a., add b. to read, “By replacing 100% of all required fuses,” to provide an option to representative sample testing.

137. Page 3/4 8–23, under Technical Specification 4.8.3.2 designate the current ACTION statement as a. to provide proper identification as an additional action statement is being added.

138. Page 3/4 8–28, under ACTION, add b. to read, “The provisions of Specification 3.0.4 are not applicable,” to clarify that reactor start-up need not be restricted when administrative controls in accordance with action statements are taken for an inoperable thermal overload bypass circuit.

139. Page 3/4 8–33, change Technical Specification 4.8.4.3.a. to read, “By performance of a CHANNEL FUNCTIONAL TEST each time the plant is in COLD SHUTDOWN for a period of more than 24 hours, unless performed within the previous 6 months.” Delete reference to footnote * and delete footnote * to provide more flexibility in test frequency and avoid a forced cold shutdown condition to perform the subject testing.

140. Page 3/4 9–4, change Technical Specification 4.9.2.6 to read, “** count rate is at least 0.7 cps; *** and revise footnote *** to read, “Provided the signal-to-noise ratio is (greater than or equal to) 2; otherwise, 3 cps.” The present technical specification refers to initial loading and startup. This change will provide checkpoints consistent with NRC generic resolution.

141. Page 3/4 9–7, change footnote * to read, “Except movement of control rods...”
with their normal drive system.”

Deleting the words “incore instrumentation” normal movement of SRM’s, IRMs, TIPS or special movable detectors is not considered a core alteration.

142. Page 3/4 9–8, change Technical Specification 4.9.6.b to read, “grape size to (greater than or equal to) 8 feet below.” The change removes the symbol for greater than replaces it with the words in parenthesis above. This is a clarification of intent.

143. Page 3/4 10–1, change Technical Specification 3.10.1 to read, “The provisions of Specification 3.4.2, 3.5.1.1, 3.8.1.3, and 3.9.1, function 8 of Specification 3.3.7.5, and Table 1.2 may be used.” The additional words cover the hydrogen and oxygen analyses on the Accident Monitoring Instrumentation section, containment atmosphere sampling need not be required if containment integrity is not required.

144. Page 3/4 11–19, add Technical Specification 4.11.2.3 to properly identify the specific Technical Specification as an additional Technical Specification is being added.

145. Page 3/4 11–19, add Technical Specification 4.11.2.3 to read, “Prior to use of the purge system through the standby gas treatment system assure that:

a. Both standby gas treatment system trains are OPERABLE whenever the purge system is in use, and

b. Whenever the purge system is in use during OPERATIONAL CONDITION 1 or 2 or 3, only one of the standby gas treatment system trains may be used.”

This change is consistent with the present NRC concerns.

146. Page 3/4 12–5, under the Sampling and Collection Frequency column, for Exposure Pathway 2, add reference to note c. This change corrects a typographical omission.

147. Page 3/4 12–5, under the Sampling and Collection Frequency column, for Exposure Pathway 4, add reference to note j. This change corrects a typographical omission.

148. Page 3/4 12–10, under the Milk column, change “15” to read “60” for Ba–140 and add “15” for La–147. This is an administrative change to correct a typographical error.

149. Page 5–1, change Technical Specification 5.2.3 to read, “The secondary containment consists of the Unit 1 and Unit 2 Reactor Buildings, the Reactor and ‘a’ a minimum free volume of 5,765,600 cubic feet.” At the Susquehanna site, reactor operation and control is accomplished in a dual type control room where controls and reactor operators for each unit are located. The plant design for both units is generally identical with some minor differences as described in the Final Safety Analysis Report for Susquehanna. Consequently, consistency and uniformity between Unit 1 and Unit 2 Technical Specifications will minimize the potential for confusion and Technical Specification violation, and allow a consistent basis for operating, maintenance and surveillance procedures for both units. This is an administrative change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications to achieve consistency throughout the Technical Specifications, correction of errors or clarification; (ii) a change that constitutes an additional limitation restriction, or control not presently included in the Technical Specifications; (v) a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method; and (vi) a change to allow a license conform to changes in the regulations, the license change results in very minor changes to facility operation clearly in keeping with the regulations so that these changes fall within the Commission’s example (vii) of actions not likely to involve significant hazards considerations: Items 72, 73, 76, 78, 114, and 115.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a safety margin.

The NRC staff has determined that the proposed amendment Item 4 will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the time taken to determine SHUTDOWN MARGIN does not form the basis for any safety analysis described in FSAR Chapter 15. It is a nuclear design parameter which is a measure used to ensure that the reactor can be made subcritical from any operating condition, including reactivity transients during postulated accidents. For this reason, it is important that it be
determined in a timely manner, but also within an achievable time frame. Therefore, this change, which proposes a more realistic minimum achievable time frame meets the staff objective without affecting existing safety analyses.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the purpose of this ACTION statement is to limit the possibility of an unmonitored release through the Standby Gas Treatment System. Since an alternative method of performing this function is being proposed, no safety analysis is affected.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the purpose of the proposed change is to provide a more flexible text frequency that eliminates having to go into a forced cold shutdown condition to perform the subject testing. Therefore, no requirements that form the basis for any existing safety analysis have been altered.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the subject change does not affect any plant design function as described in the FSAR.

3) Involve a significant reduction in the margin of safety because the increase in time for operator action is reasonable and meets the objective and intent of the provision.

Item No. 83 will not:
1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the purpose of the ACTION statement is to limit the possibility of an unmonitored release through the Standby Gas Treatment System. Since an alternative method of performing this function is being proposed, no safety analysis is affected.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the purpose of the proposed change is to provide a more flexible text frequency that eliminates having to go into a forced cold shutdown condition to perform the subject testing. Therefore, no requirements that form the basis for any existing safety analysis have been altered.

3) Involve a significant reduction in the margin of safety because the increase in time for operator action is reasonable and meets the objective and intent of the provision.

Item No. 121 will not:
1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the safety analyses in the FSAR assume the diesel generators start within 10 seconds. The subsequent four starts required by this surveillance are not necessary to meet the existing analysis. The first 10-second start is achieved by performance of other existing surveillances, e.g., 4.8.1.1.2.a.4 and 4.8.1.2.a.7.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the purpose of the proposed change is to provide a more flexible text frequency that eliminates having to go into a forced cold shutdown condition to perform the subject testing. Therefore, no requirements that form the basis for any existing safety analysis have been altered.

3) Involve a significant reduction in the margin of safety because the increase in time for operator action is reasonable and meets the objective and intent of the provision.

The first 10-second start is achieved by performance of other existing surveillances, e.g., 4.8.1.1.2.a.4 and 4.8.1.2.a.7.

By 9 June, 1984, the licensee will post a sign on the recirculation pump pressure verification valve stating that it is interlocked and will operate during a forced cold shutdown. This function is being performed by differential pressure transmitters, and the resulting response time shall be within ±10% of the specified value. Additionally, Technical Specification Table 3.8.4.1-1 would be modified by the addition of section c listing the reactor recirculation pump circuit breaker overcurrent relays with their associated specification valves. The proposed change supports modifications on the recirculation pump control system.

**Basis for Proposed No Significant Hazards Consideration Determination:** The licensee in his letter dated September 7, 1984, states that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the equipment being installed is functionally installed is essentially and environmentally qualified for its service location, and will not adversely affect existing equipment. The proposed change supports modifications on the recirculation pump circuit breaker overcurrent relays with their associated specification valves. The proposed change supports modifications involving the installation of overcurrent relays on each reactor recirculation pump circuit breaker in order to provide redundant overcurrent protection for the primary containment penetration conductor.

**Local Public Document Room Location:** Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

**Attorney for Licensee:** Jay Silberg, Esquire, Shaw, Pfitman, Potts & Trowbridge, 180 M Street N.W., Washington, D.C. 20038.

**NRC Branch Chief:** A. Schwencr, Pennsylvania Power & Light Company, Dock No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzern County, Pennsylvania

**Date of amendment request:** September 7, 1984.

**Description of amendment request:** The purpose of the proposed amendment request is to change Technical Specification 4.8.4.1.a by the addition of paragraph 3 to read, "Functionally testing each overcurrent relay listed in Table 3.8.4.1-1. Testing of these relays shall consist of injecting a current relay in excess of 120% of the nominal relay initiation current and measuring the response time. The measured response time shall be within ±10% of the specified value." Additionally, Technical Specification Table 3.8.4.1-1 would be modified by the addition of section c listing the reactor recirculation pump circuit breaker overcurrent relays with their associated specification valves. The proposed change supports modifications involving the installation of overcurrent relays on each reactor recirculation pump circuit breaker in order to provide redundant overcurrent protection for the primary containment penetration conductor.
Trowbridge, 1800 M Street, N.W.,
Washington, D.C. 20036.
NRC Branch Chief: A. Schwencer.
Pennsylvania Power & Light Company,
Docket No. 50-387, Susquehanna Steam
Electric Station, Unit 1, Luzerne County,
Pennsylvania

Date of amendment request:
September 24, 1984.

Description of amendment request:
The purpose of the proposed
amendment is to change Technical
Specification Table 3.3.7.1-1 to reflect
the installation of a permanent radiation
monitoring system in the new fuel
storage vault and suspend fuel storage
pool areas specifically, for items 2.a. (1)
and 2.a. (2) the “Minimum Channels
Operable” would be changed from “1”
to “2”, and for item 2.a. (1) the
“Measurement Range” would be changed
to “10” to “102” mR/hr” to
read “10” to “102” mR/hr.”

Basis for Proposed No Significant
Hazards Consideration Determination:
The Commission has provided guidance
concerning the application of the no
significant hazards consideration
standard by providing certain examples
(48 FR 14870). One of the examples of
actions not likely to involve a significant
hazards consideration, example (ii),
relates to a change that constitutes an
additional limitation, restriction, or
control not presently included in the
technical specifications. The proposed
changes to increase the “Minimum
Channels Operable” from 1 to 2 for
items 2.a.1) and 2.a.2) in Technical
Specification Table 3.3.7.1-1 are changes
which constitute an additional
limitation, restriction or control not
presently included in the technical
specifications, and therefore, the NRC
staff proposes to find that these changes
do not involve a significant hazards
consideration. The licensee in his letter
dated September 6, 1984, stated that
the change in “Measurement Range” for
item 2.a.1) in Technical Specification
Table 3.3.7.1-1 is a change which is
consistent with the detection
requirements specified in 10 CFR 70.24.
The measure range of the radiation
monitor is for indication and is not
taken for credit in any accident analysis.
This change clearly does not (1) involve
a significant increase in the probability
or consequences of an accident
previously evaluated, (2) create the
possibility of a new or different kind of
accident from any accident previously
evaluated, or (3) involve a significant
reduction in margin of safety.
Therefore, the NRC staff proposes to
find that the change in Measurement Range
clearly involves no significant hazards
consideration.

Local Public Document Room
Location: Osterhout Free Library,
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Franklin Street, Wilkes-Barre,
Pennsylvania 18701.
Attorney for licensee: Jay Silberg,
Esquire, Shaw, Pittman, Potts&
Trowbridge, 1800 M Street N.W.,
Washington, D.C. 20036.
NRC Branch Chief: A. Schwencer.
Pennsylvania Power & Light Company,
Docket No. 50-387 and 50-388,
Susquehanna Steam Electric Station,
Units 1 and 2, Luzerne County,
Pennsylvania

Date of amendment request:
September 6, 1984.

Description of amendment request:
The purpose of the proposed
amendment is to revise Susquehanna
Unit 1 and Unit 2 Technical
Specifications to 1) add an additional
rod block monitor (RBM) setpoint of
108%, creating an increase in the CPR
margin to allow additional operating flexibility
within the power flow map, 2) change
the labels associated with Figures 3.3.3-1
and redesignate as Figure 3.3.3-1a and
3) add Figure 3.3.3-1b. In addition, the
proposed change revises Susquehanna
Unit 1 Technical Specifications to
update Figure 3.3.3-1 as a result of
actual startup test data relating to
recreational pump cooldown.

Basis for Proposed No Significant
Hazards Consideration Determination:
The licensee in his letter dated
September 6, 1984, stated that the
proposed dual RBM setpoint technical
specification does not involve a
significant increase in the probability or
consequences of an accident previously
evaluated because with use of the
second RBM setpoint at 108%,
resulting in an increase in the CPR
margin. The licensee also stated that the
dual RBM setpoint does not result in a
significant reduction in a margin of safety because the existing
MCPR Safety Limit remains in effect
with the addition of the record RBM
setpoint due to a corresponding increase in
the CPR margin with the relaxed RBM
setpoint. The staff agrees with the
licensee’s evaluation in this regard, and
accordingly proposes to find the
proposed change for dual RBM set-
points involve no significant hazards
consideration.

The Commission has provided
guidance concerning the application of
the no significant hazards consideration
standards by providing certain
examples. Examples of actions not likely
to involve significant hazards
considerations are described in
example (i), a purely administrative change to
The licensee in his letter dated September 19, 1984, stated that the changes to the Technical Specification 4.6.1.7.c do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety because the temperature elements are neither safety-related nor Class 1E, and the change does not effect any existing safety-related system. The NRC staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposes to find that this change involves no significant hazards consideration.

The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of action not likely to involve a significant hazards consideration, example (ii), relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The change to add ESW valves HV-06933A and B to Table 3.4.2-1 for Units 1 and 2 is a change which constitutes an additional limitation, restriction or control not presently included in the technical specifications. The NRC staff proposes to find that this change does not involve a significant hazards consideration.

The purpose of the proposed amendment is to revise Technical Specification 4.6.1.7 to support relocation of temperature elements used to monitor drywell atmosphere temperature in the area of the recirculation pumps. Specifically, part "e" would be modified to read "85°" instead of "60°, 85°".
The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14370). One of the examples of actions not likely to involve significant hazards considerations, example (i), is a purely administrative change to technical specifications: for example, a change to Table 3.8.4.2-1 clearly is a more stringent surveillance requirement. The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14370). One of the examples of actions not likely to involve significant hazards considerations is example (ii)—a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The change to Table 3.8.4.2-1 clearly is an addition that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Therefore, the NRC staff proposes to find the change to Table 3.8.4.2-1 does not involve a significant hazards consideration.

Local Public Document Room
Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.


NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 25, 1984, as amended November 12, 1984.

Description of amendment request: The purpose of the proposed amendment request is to physically modify the plant by adding two motor operated valves to the ESF system return lines from the Unit 2 direct-expansion (DX) units. This physical plant modification will be reflected in Table 3.8.4.2-1 of the Technical Specifications. Table 3.8.4.2-1 will show the addition of two motor operated valves in the ESF system.

Basis for Proposed No Significant Hazards Consideration Determination: The licensees in their letters dated September 25, 1984, and November 12, 1984, stated that the proposed addition of the two motor operated valves to the ESF system and to Table 3.8.4.2-1 of the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated. 2) create the possibility of a new or different kind of accident from any accident previously evaluated, or 3) involve a significant reduction in a margin of safety. The proposed modifications do not affect the capability of ESF to function properly under normal or accident conditions.

The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14370). One of the examples of actions not likely to involve significant hazards considerations is example (i)—a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The change to Table 3.8.4.2-1 clearly is an addition that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Therefore, the NRC staff proposes to find the change to Table 3.8.4.2-1 does not involve a significant hazards consideration.

Local Public Document Room
Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.


NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50-387 and 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: September 25, 1984, as amended November 12, 1984.

Description of amendment request: The purpose of the proposed amendment request is to physically modify the plant by adding two motor operated valves to the ESF system return lines from the Unit 2 direct-expansion (DX) units. This physical plant modification will be reflected in Table 3.8.4.2-1 of the Technical Specifications. Table 3.8.4.2-1 will show the addition of two motor operated valves in the ESF system.

Basis for Proposed No Significant Hazards Consideration Determination: The licensees in their letters dated September 25, 1984, and November 12, 1984, stated that the proposed addition of the two motor operated valves to the ESF system and to Table 3.8.4.2-1 of the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, 2) create the possibility of a new or different kind of accident from any accident previously evaluated, or 3) involve a significant reduction in a margin of safety. The proposed modifications do not affect the capability of ESF to function properly under normal or accident conditions.

The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14370). One of the examples of actions not likely to involve significant hazards considerations is example (i)—a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The change to Table 3.8.4.2-1 clearly is an addition that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Therefore, the NRC staff proposes to find the change to Table 3.8.4.2-1 does not involve a significant hazards consideration.

Local Public Document Room
Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.


NRC Branch Chief: A. Schwencer.

Philadelphia Electric Company, Public Service Electric and Gas Company, Dalmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-270, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of amendment request: September 19, 1984.

Description of amendment request: The proposed amendment request to the Peach Bottom Atomic Power Station Units 2 and 3 Technical Specifications (TSs) would add a surveillance requirement for the Automatic Depressurization System (ADS) Bypass Timer and would change the title of the "Auto Blowdown Timer" to "ADS Actuation Timer" in order to correctly identify the function of the timer on Table 3.2.5 ("Instrumentation That Initiates or Controls the Core and Containment Cooling Systems"). These requests reflect the NRC approved modification to the Peach Bottom ADS required to comply with Item ILK.3.28 (ADS Actuation) of NUREG-0737, "Clarification of TMI Action Plan Requirements".

Basis for proposed no significant hazards consideration determination: The ADS is currently activated automatically upon coincident signals of (1) low water level in the reactor, (2) high drywell pressure, and (3) low pressure ECGS pumps, to achieve transient and accident events which do not directly produce a high drywell signal and are degraded by a loss of all high pressure injection systems, adequate core cooling is assured by manual depressurization of the reactor followed by injection from the low pressure systems. To reduce the dependence on operator action and to satisfy Item ILK.3.1B of NUREG-0737, the licensee proposed by letter dated July 15, 1983, to modify the ADS control logic by bypassing the high drywell pressure permissive using a bypass timer and the addition of a manual inhibit switch. These hardware modifications were approved by the staff by letters dated June 3, 1983, and June 5, 1984. Associated with the above approved modifications was a request by the NRC staff for a justification for the setting on the bypass timer, periodic testing plans for the timer, and a surveillance plan for the manual switch.
The licensee's proposed TSs are in response to these requests and would add periodic surveillance (testing) requirements for the bypass timer. Surveillance testing of the manual switch would be covered by the current TS requirements for ADS logic testing and, therefore, no additional TSs were proposed by the licensee.

The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (48 FR 14870). An example of an amendment that is not likely to involve a significant hazards consideration is "[i] . . . a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement".

The proposed change as discussed above fits this example because it adds a surveillance requirement to the Peach Bottom TSs which is presently not included.

The proposed title change concerning the ADS Timer, described above, also fits one of the examples of an amendment not likely to involve a significant hazards consideration, namely, "[i] . . . a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature". This proposed title change from "Auto Blowdown Timer" to "ADS Actuation Timer" is a change in nomenclature - which is intended to correctly identify the function of the timer.

Since the application involves proposed changes for which no significant hazards considerations exist, the staff has made a proposed determination that this application for amendment involves no significant hazards consideration.


**Attorney for licensee:** Troy B. Conner, Jr., 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

**NRC Branch Chief:** John F. Stolz.

Portland General Electric Company et al., Docket No. 50-334, Trojan Nuclear Plant, Columbia County, Oregon

**Date of amendment request:** October 1, 1984. This amendment request supersedes an earlier request dated March 30, 1983.

**Description of amendment request:** The amendment would add new requirements for operability, visual inspections and periodic testing of mechanical snubbers to ensure that these devices are operable. Snubbers are attached to piping and equipment to provide restraint during a seismic or other event which initiates dynamic loads, yet allow slow motion such as that produced by thermal expansion. The amendment would also make minor revisions to the requirements for testing and inspection of hydraulic snubbers, such as including large-capacity snubbers (which can now be tested) in the functional test program, and more clearly defining the acceptance criteria for visual inspection and functional testing.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples which were published in the Federal Register on April 6, 1973 (48 FR 14870). One of the examples of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications - for example, a more stringent surveillance requirement. The amendment request, discussed above, fits this example. On this basis, the Commission proposes to determine that the amendment involves no significant hazards consideration.

**Local Public Document Room location:** Multnomah County Library, 631 S.W. 10th Avenue, Portland, Oregon.

**Attorney for licensees:** J.W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

**NRC Branch Chief:** James R. Miller.

Portland General Electric Company et al., Docket No. 50-334, Trojan Nuclear Plant, Columbia County, Oregon

**Date of amendment request:** November 2, 1984.

**Description of amendment request:** The amendment would delete facility license condition 2.C.(10) relating to the U.S./International Atomic Energy Agency (IAEA) Safeguards program. Under this program, the Trojan Facility was subject to IAEA inspections of nuclear material accounting and nuclear material control. The amendment would not alter in any way the safeguards provisions required by NRC regulations.

The termination provision of license condition 2.C.(10) provides that the IAEA program be terminated as of the date of such notice from the NRC. That notice was provided to the licensee in a letter dated May 21, 1984 and accordingly the IAEA inspection program was terminated at that time.

The proposed amendment would delete this license condition since it is no longer in effect.

**Basis for proposed no significant hazards consideration determination:** As explained above, the amendment will delete a license condition which is no longer in effect. Therefore the proposed action is purely administrative in nature.

Operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident, or (3) involve a significant reduction in a margin of safety. Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

**Local Public Document Room location:** Multnomah County Library, 631 S.W. 10th Avenue, Portland, Oregon.

**Attorney for licensees:** J.W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

**NRC Branch Chief:** James R. Miller.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

**Date of amendment request:** October 9, 1984.

**Description of amendment request:** The proposed amendment would revise the Technical Specifications to correct a typographical error in Table 3.2-7 ("Instrumentation that Initiates Recirculation Pump Trip") of Appendix A.

As the existing Technical Specifications are written, this table requires that the instruments used to detect high reactor pressure for the purpose of initiating a recirculation pump trip have a setpoint greater than or equal to 1120 psig. This incorrectly establishes a lower limit for this setpoint. The intent of the recirculation pump trip is to provide a means of reducing reactor power and, consequently, reactor pressure in the event of a failure-to-scan. In the General Electric Company Topical Report NEDO-10349, "Analysis of Anticipated Transients Without Scram," (ATWS) dated March 1971, an upper limit is established for the reactor pressure setpoint for recirculation pump trip. The response of the FitzPatrick.
plant to a postulated ATWS event falls within the envelope of events given in this topical report. (see FitzPatrick Technical Specifications, page 60). Therefore, Table 3.2-7 should correctly establish an upper limit for the reactor pressure setpoint such that exceeding this limit will trip the recirculation pumps. Accordingly, the trip level setting associated with the reactor high pressure instrument would be changed from "greater than or equal to 1120 psig" to "less than or equal to 1120 psig."

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Clearly, correction of the Technical Specifications to establish an upper limit for the reactor high pressure setpoint for recirculation pump trip in the event of a failure-to-scram satisfies the above criteria.

Based on the foregoing, the Commission proposes to determine that the proposed license amendment does not involve a significant hazards consideration.


Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domencio B. Vassallo.

Power Authority of The State of New York, Docket No. 59-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: October 31, 1984.

Description of amendment request: This proposed change revises Specification 6.5.2 as discussed below.

The Safety Review Committee membership will be changed to include the next-to-highest level management in the Nuclear Generation, Engineering and Quality Assurance and Reliability Departments. The Directors of Mechanical, Electrical, Nuclear, Civil/ Structural, and Piping and Process in the Design and Analysis Section of the Engineering Department will be replaced by the Vice President-Design and Analysis. The Managers of Radiological Health and Chemistry and Operational Analysis and Training in the Nuclear Generation Department will be replaced by the Vice President- Generic Nuclear Support. The Director of Environmental Programs in the Engineering Department will no longer be a member of the Committee.

The Resident Managers for the Indian Point 3 and James A. FitzPatrick facilities will be included as voting members of the Safety Review Committee, whereas previously, these individuals were non-voting members. Also, the Consultant to the Safety Review Committee will be included as a voting member of the Committee, whereas previously, this individual was an alternate voting member. These changes in the Committee membership reduces the Committee to nine (9) voting members.

Basis for proposed no significant hazards consideration determination: The proposed changes do not degrade the competence of the safety review committee and will assure that the aspect of plant safety management is adequate. Therefore the proposed amendment clearly involves no significant hazards consideration, because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.


Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 59-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 27, 1983

Description of amendment request: The proposed amendments request consists of three (3) independent parts. Part (1) would modify the Salem Unit 1 Technical Specifications, Table 3.3-1 (Action 1) and Table 3.3-3 (Action 13) to read the same as Salem Unit 2 Technical Specifications Tables 3.3-1 and 3.3-3. Part (2) would correct a typographical error in the Salem Unit 2 Technical Specifications. Part (3) would replace the response time requirement for the overtemperature delta T reactor trip for both Units 1 and 2 and would make them identical.

Basis for proposed no significant hazards consideration determination: Part (1) The NRC has recently added requirements to perform periodic preventive maintenance on the unit's reactor trip breakers. Following such maintenance, performance of necessary breaker alignment and post operability testing is required. Current Unit 1 Technical Specifications allow a one-hour time period to perform the testing. An increase from one to two hours for the testing time interval will not significantly reduce the margin of safety as defined in the Technical Specifications bases.

The Commission has provided guidance concerning the application of the standards for a No Significant Hazards determination by providing examples of actions not likely to involve a Significant Hazards Consideration in the Federal Register (48 FR 14670). One of the examples (vi) relates to changes that may result in some increase to the probability or consequences of a previously-analyzed accident or that may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. These changes will also establish consistency in the Technical Specifications for identical equipment on Salem Units 1 and 2. The NRC has previously evaluated the safety significance of allowing a two hour testing time on Salem Unit No. 2 and in the Standard Technical Specifications for Westinghouse PWR's, NUREG-0452, Rev. 3. The results were clearly within all acceptable criteria with respect to the reactor trip system in the Standard Review Plan.

On the basis stated above, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration.

Part (2) The proposed change would correct the third sentence of Section 4.8.1.2.2.c.7 of the Salem Unit 2 Technical Specifications to read 4.8.1.2.2.c.4. The proposed correction will restore the subject specification to its intended wording and meaning. The correction will require, and be in agreement with, the testing that has
been periodically conducted as originally intended, but which was incorrectly numbered in Revision 0 of the Unit 2 Technical Specifications. The Commission has provided guidance concerning the application of the standards for a No Significant Hazards determination by providing examples of actions not likely to involve a Significant Hazards Consideration in the Federal Register (48 FR 14870). One of the example (i) relates to a purely administrative change, for example the correction of an error. Since this proposed change conforms to this example, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration. Part (3) The proposed change would change the response time for the Unit 2 overtemperature delta-T trip on Table 3.2-2, "Reactor Trip System Instrumentation Response Time" from, equal to or less than 2.0 seconds to equal to or less than 0.5 seconds and change the corresponding response time on Unit 1 from equal to or less than 6.0 seconds to equal to or less than 5.0 seconds. This change is necessary on Unit 2 to allow the use of reistance temperature detectors (RTD's) in the reactor coolant system that meet the environmental qualification criteria of Regulatory Guide 1.67. The RTD's that meet the requirements of Regulatory Guide 1.67 have longer response times than the previously installed (unqualified) detectors. This causes the overall response of the overtemperature delta-T to exceed the Unit 2 technical specification response time requirements of equal to or less than 2.0 seconds. The requirement on Unit No. 1 is presently equal to or less than 0.6 seconds for the same (identical) equipment and is proposed to be changed on that Unit in the interest of conservatism and continuity in the technical specification. The time delay to trip assumed in the accident analyses for Salem Units 1 and 2 overtemperature delta-T is shown in Table 15.1-3 of the Salem FSAR as 6.0 seconds total time delay. The proposed 0.5 seconds response time will provide a conservative limit relative to the accident analysis of the FSAR and will, at the same time, provide sufficient latitude to allow the use of presently available, environmentally qualified, RTD's. The operation of both Salem Units, as a result of this change, will remain within previously analysed bounds and clearly within all acceptable criteria with respect to the reactor trip system in the Standard Review Plan. The Commission has provided guidance concerning the application of the standards for a No Significant Hazards determination by providing examples of actions not likely to involve a Significant Hazards Consideration in the Federal Register (48 FR 14870). One of the examples (vi) relates to changes that may result in some increase to the probability or consequences of a previously-analyzed accident or that may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. These changes will also establish consistency in the Technical Specifications for identical equipment on Salem Units 1 and 2. Since the proposed change conforms to this example, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration. Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 07479. Attorney for licensees: Conner and Wetterhann, Suite 1039, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Public Service Electric and Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey Date of amendment request: September 29, 1983. Description of amendment request: The original basis for the NRC's requiring installation of the upper inspection ports was concerned with the early detection of the denting phenomenon and associated tube support plate deformation. The denting phenomenon has historically first occurred on the hot leg side of the steam generator and progressed from the lower tube support plates to the upper tube support plates. The current state-of-the-art is such that adequate means are now available (e.g., eddy current testing, profilometry tube gauging and visual inspection through the lower inspection ports) to detect the onset of extensive denting, associated with support plate cracking and "hourglassing" of support plate flow slots. Therefore, any occurrence of denting to the point where visual indication would be apparent through an inspection port located above the top tube support plate would occur after the other techniques had given earlier warning. Based on these reasons, we found that there was no longer adequate justification for installing upper inspection ports in the Salem 2 steam generators at the first refueling outage, and that the licensee's previous commitment for installing upper inspection ports was no longer applicable and was not required. Based on the above, we concluded that License Condition 2.C.13[b] could be removed from Facility Operating License No. DDR-3 for Salem Unit 2. However, the staff was conducting an on-going review of steam generators at that time. New findings from this review could have impacted on our conclusion. Therefore, we recommended that License Condition 2.C.13[b] be modified to allow delaying of installation of the inspection ports until the second refueling outage. As such, Amendment 17 to the Operation License changed License Condition 2.C.13[b] to read: "PSEG shall install inspection ports in the steam generators. Implementation may be delayed until the second refueling outage." Basis for proposed significant hazards consideration determination: The NRC has not completed its review and investigation. No new evidence to support installation of the upper inspection ports was found; therefore, License Condition 2.C.13[b] can now be removed. Since no new evidence was found, and since we had previously concluded in the Safety Evaluation for Amendment 17 of the Facility Operating License, that the inspection ports were not required, we have determined that the proposed amendment does not involve a significant reduction in a safety margin. Therefore, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration. Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 07479. Attorney for licencees: Conner and Wetterhann, Suite 1039, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Public Service Electric and Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey Date of amendment request: October 15, 1983. Description of amendment request: The proposed change would revise the final acceptance criteria for the "K(2) Normalized E_{k}(z) as a Function of
Sacramento Municipal Utility Distinct, Docket No. 93-422, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: January 28, 1984, as supplemented July 11, 1984, and revised October 30, 1984.

Description of amendment request: The proposed amendment would change the Technical Specifications to modify the definition of the term "Operable" as it applies to the single-failure criterion for safety systems. The proposed change was in response to NRC's April 10, 1980 letter, which was sent to all licensees requesting that they revise the definition of "Operable" consistent with guidance issued by the NRC. The NRC has proposed a revised definition that is more restrictive in that it extends the definition to include systems that are associated with the system in question.

The current Technical Specifications define a system or component as "Operable" "when it is capable of performing its intended function in its required manner." The proposed change will preserve the single-failure criterion by requiring all redundant components of safety related systems to be "Operable." When the required redundancy is not maintained, either due to equipment failure or maintenance outage, action is required within a specified time to bring the plant to cold shutdown.

Basis for proposed no significant hazards consideration determination: Using a K(Z) curve identical to the revised K(Z) curve proposed in this change request, a most severe small break LOCA analysis was performed for Salem Units 1 and 2. The analysis was reviewed and approved by the NRC to effect the change for Unit 1. The analysis concluded that sufficient core flooding was provided by the high head portion of the ECCS and accumulators to maintain peak clad temperatures and meet the requirements of 10 CFR 50.46. Thus current safety analysis design bases continue to be met. Since current core safety limits are still applicable and since no plant modifications resulted from this proposed change we have determined that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

On the basis stated above, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 825 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility Distinct, 6201 S Street, P.O. Box 16500, Sacramento, California 95813.

NRC Branch Chief: John F Stolz.

Sacramento Municipal Utility Distinct, Docket No. 93-422, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: March 28, 1984, as supplemented on October 4, 1984 (withheld from public disclosure).

Description of amendment request: The proposed amendment would revise the Rancho Seco Nuclear Generating Station Physical Security Plan Amendment 11 dated October 15, 1982. The proposed changes include: (1) Administrative and editorial changes to correct errors, refer to proposed conditions that have already been implemented, update security titles and correct references; (2) addition of three newly constructed buildings to the plant protection program; (3) modification of on-site security response methods and procedures including the elimination of armored response vehicles; and (4) deletion of certain non-vital area doors from the access control program. Pursuant to 10 CFR 73.21, these changes are withheld from public inspection.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.62 by providing certain examples (48 FR 14679). Two of these examples of guidance are a purely administrative change to the technical specifications; and a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The first proposed change, Item (1), is purely an administrative change in that references are corrected, errors are corrected and titles are changed to reflect current conditions. The second change, Item (2), conforms to the second example in that adding the three newly constructed buildings that are not currently in the plant protection program to the plant protection program imposes additional limitations, restriction or control not currently in the Technical Specifications.

The third change, Item (3), concerns the changes to response methods and procedures which result from a proposed elimination of the armored response vehicles and replacing them with fixed defense positions and light-weight vehicles. The licensee's substitute proposals should provide a
more rapid response to more areas and result in a more effective security program. The proposed change does not affect reactor operation, accident analyses or plant design. The forth proposed change, item (4), concerns the removal of locking and alarming grade-level doors opening into non-vital areas to facilitate movement through the plant during emergencies. The grade-level doors that access vital areas would continue to be locked, alarmed and controlled. Therefore, this proposed change would enhance reactor operations and not affect accident analyses or plant design. Therefore, operation in accordance with the third and fourth proposed changes will not (1) involve a significant change in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Based on the above, the NRC staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 823 1 Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 16830, Sacramento, California 95831.

Sacramento Municipal Utility District, Docket No. 59-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 25, 1984.

Description of amendment request: The proposed amendment (No. 105) would revise the Technical Specifications to conform to the new rule on reporting requirements set forth in 10 CFR 50.73. The new § 50.73 provides for a revised Licensee Event Report System, and replaces all existing requirements for licensees to report "Reportable Occurrences" as defined in individual plant Technical Specifications.

All licensees have been notified of this new rule and Generic Letter 83-3 was issued by the staff to provide guidance on revising individual plant Technical Specifications. Sacramento Municipal Utility District responded to the Generic Letter by the subject amendment request.

The second part of the proposed amendment (No. 93, Revision 2) concerning changes to the administrative section of the Technical Specifications resulting from changes in the licensee's management organization will be the subject of a separate notice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14670). One of these, Example (vii), involving no significant hazards considerations is "A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations" The requested amendment matches the example and the staff, therefore, proposes to characterize it as involving no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 823 1 Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 16830, Sacramento, California 95831.

Sacramento Municipal Utility District, Docket No. 59-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 25, 1984.

Description of amendment request: The submittal revises the request for amendment dated April 19, 1983, as revised November 14, 1983, which was noticed in the Federal Register on April 23, 1984 (49 FR 17972). The submittal would make the following additional changes to the Administrative Controls Section (Section 6.0) of the Technical Specifications:

(1) Change the titles of Supervisor to Superintendent for the position of Training Supervisor;

(2) Increase the membership of the Plant Review Committees (PRC) by one;

(3) Revise the titles of the PRC members to reflect title changes within the Sacramento Municipal Utility District (SMUD) organization;

(4) Indicate that alternate members of the PRC should be approved by the Manager of Nuclear Operations and no more than two alternates shall participate in the PRC activities at any one time for the purpose of establishing a quorum;

(5) Increase by one the number of members of the PRC necessary for a quorum;

(6) Add a quality assurance engineer as the secretary and non-voting member of the Management Safety Review Committee (MSRC);

(7) Change titles of the MSRC members to reflect title changes within the SMUD organization;

(8) Change approval authority of alternate member of the MSRC from the MSRC Chairman to the General Manager and

(9) Add a statement that the list of alternates shall be maintained by the MSRC secretary.

This notice concerns only the Proposed Amendment No. 93, Revision 2, part of the application. The proposed Amendment No. 105 portion of the application will be covered by separate notice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14670). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications; (ii) a change to achieve consistency throughout the Technical Specifications; correction of an error, or a change in nomenclature; and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications.

The June 25, 1984, submittal revises the request for amendment dated April 14, 1983, as revised November 14, 1983, to propose additional changes to section 6.0 of the Technical Specifications. The additional changes proposed are encompassed by the examples in that:

(1) The change in title of Supervisor to Superintendent for the Training Supervisor is an administrative change since it is a nomenclature change with no change in authorities or responsibilities;

(2) the addition of an additional member to the PRC constitutes an additional control not presently included in the Technical Specification;

(3) the revisions of the titles of the PRC members is an administrative change since it is a nomenclature change with no change in authorities or responsibilities;

(4) the statement that alternate members of the PRC shall be approved by the Manager of Nuclear Operations and no more than two alternates shall participate in the PRC activities at any time for the purpose of establishing a quorum is an administrative change in that it is only a clarification statement and does not change how the alternates are approved or the number of alternates that can be
used to establish quorum; (6) the increase by one of the number of members on the PRC necessary for a quorum constitute; an additional control not presently included in the Technical Specifications; (6) the addition of a quality assurance engineer as secretary and a non-voting member of the MSRC is an administrative change in that it does not change the effectiveness, audit functions, membership of the MSRC; (7) the change of the titles of the MSRC members is an administrative change in that it is a nomenclature change with no change in authorities or responsibilities; (8) the change in approval authority of alternate members of the MSRC from the MSRC Chairman which in the current Technical Specifications is the Assistant General Manager and Chief Engineer, to the General Manager, a more senior position, is an additional control not presently in the Technical Specifications; and (9) the addition of the statement that the list of alternatives be maintained by the MSRC secretary is an additional control not presently in the Technical Specifications. Based on the above, the Commission proposes to determine that the additional changes to the Technical Specifications do not change our previous conclusion that the application does not involve a significant hazards consideration.

**Local Public Document Room location:** Sacramento City-County Library, 828 I Street, Sacramento, California.

**Attention for licensees:** David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

**NRC Branch Chief:** John F Stolz.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

**Date of amendment request:** June 28, 1984 and October 1, 1984.

**Description of amendment request:**
These submittals supplement the request for amendment dated July 22, 1983, which was noticed in the Federal Register on May 23, 1984 (49 FR 21837). The June 28, 1984, submittal provides additional technical information concerning the design of the Phase Imbalance/Underpower Reactor Coolant Pump circuit used to initiate auxiliary control rod flow. The October 1, 1984, submittal proposes a change to Table 3.5.1-1 of the Technical Specifications to make its nomenclature consistent with the nomenclature proposed for Table 4.1-1 in the July 22, 1983, application. The Technical Specification revisions proposed in the July 22, 1983, application remain unchanged.

**Basis for proposed no significant hazards consideration determination:**
The Commission has provided guidance concerning the application of the standards in 10 CFR 50.52 by providing certain examples of actions involving no significant hazards considerations. One of the examples of actions involving no significant hazards considerations (i) relates to amendments of a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The June 28, 1984, submittal provides additional technical information to supplement the information provided in the submittal of July 22, 1983. The supplemental information does not change the proposed Technical Specifications nor the technical justification for the proposed Technical Specification change. Therefore, the June 28, 1984, submittal does not change our proposed determination that the July 22, 1983, request for amendment does not involve a significant hazards consideration.

The October 1, 1984, submittal is a change in nomenclature to Table 3.5.1-1 in the current Technical Specifications to make the table's nomenclature consistent with the nomenclature proposed in the July 22, 1983, amendment request. Since the October 1, 1984, submittal involves only a proposed nomenclature change to the existing Technical Specifications, it is the same as the above example of an action involving no significant hazards consideration. Therefore, the Commission proposes that the change involves no significant hazards consideration.

**Local Public Document Room location:** Sacramento City-County Library, 828 I Street, Sacramento, California.

**Attention for licensees:** David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

**NRC Branch Chief:** John F Stolz.

**Tennessee Valley Authority, Docket Nos. 53-253, 53-255 and 53-295, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

**Date of amendment request:** September 27, 1984.

**Description of amendment request:**
The amendments would modify the Technical Specifications (TS) to:
1. Delete a limiting condition for operation (LCO) which requires roving firewatches in certain areas pending installation of automatic fire suppression systems, and an associated surveillance requirement which requires that a safety engineer perform a monthly walk-through inspection of the fire protection systems.
2. Make editorial changes such as renumbering and retitling of paragraphs, different abbreviations, update of Table of Contents, and grammatical changes.
3. Modify administrative requirements relating to the responsibilities, composition, review methods, report distribution, record keeping, and personnel qualifications of the Nuclear Safety Review Board (NSRB) and Plant Operations Review Committee (PORC).
4. Modify event notification and reporting requirements.
5. Delete existing organization charts (and associated references to those charts) entitled "TVA Office of Power Organization for Operation of Nuclear Plants," "Functional Organization," "Review and Audit Function," and "Implant Fire Program Organization." Add new organization charts entitled "Facility Organization" and "Offsite Organization for Facility Management and Technical Support." These changes encompass the creation of a new "site director" position, changes in title for existing positions, relocation of certain functions from offsite to onsite, and other changes relating to a reorganization intended to improve management controls.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by presenting examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14670). These examples include: "(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. (vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." With respect to change no. 1, the existing LCO for roving fire watches contains a proviso by which the requirements self-terminate as automatic fire suppression systems are installed in the subject areas. The automatic fire suppression systems have been installed and have their own LCO's and associated surveillance requirements. Because the interim fire protection measures have been replaced...
by equivalent permanent equipment, change no. 1 is not likely to significantly increase the probability or consequences of a previously analyzed accident, create the possibility of a new kind of accident, or reduce a safety margin. Change no. 1 is therefore not likely to involve a significant hazards consideration.

Change no. 2 applies to simple changes in nomenclature and editorial changes. These changes are purely administrative in nature and are encompassed by example (i) of actions not likely to involve significant hazards considerations.

Change no. 3 modifies administrative requirements relating to review and audit of plant activities. These changes to the TS do not modify or delete any TS Definitions, Safety Limits, Limiting Safety System Settings, Limiting Conditions for Operation, Surveillance Requirements or Design Features and are thus unlikely to increase the possibility or consequences of a previously-analyzed accident, introduce the possibility of a new kind of accident, or reduce a safety margin. Because the changes will improve management overview of plant activities, they are likely to have the indirect effect of improving the margin of safety and reducing the possibility of an accident. Change no. 3 is therefore unlikely to involve a significant hazards consideration.

The changes relating to event notification and reporting will bring the TS into conformance with 10 CFR 50.73. Change no. 4 is thus encompassed by example (vii) of changes not likely to involve a significant hazards consideration.

Change no. 5 reflects a licensee management reorganization which has been implemented for the purpose of improving management overview of facility operations, modifications, and maintenance activities. Because the changes to the TS do not modify or delete any TS Definitions, Safety Limits, Limiting Safety System Settings, Limiting Conditions for Operation, or Surveillance Requirements they will not increase the possibility or consequences of a previously-analyzed accident, introduce the possibility of a new kind of accident, or reduce a safety margin. Because the changes will improve management overview of plant activities, they are likely to have the indirect effect of improving the margin of safety and reducing the possibility of an accident.

Since the application for amendment involves proposed changes that are encompassed by the criteria or an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.


NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–256, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 19, 1984.

Description of amendment request: The amendments would modify the Technical Specifications to delete the requirement for and all references to the static pressure limiting (vacuum relief) system for the secondary containment.

The original purpose of the static pressure limiting system was to prevent the standby gas treatment (SSGT) system blowers, which have excess capacity, from creating a large negative pressure in the reactor building and causing difficulty in the opening of doors as stated in the Final Safety Analysis Report (FSAR) section 5.3.3.7. The system was in the Technical Specifications because, if system dampers fail in the open position, it will result in the loss of secondary containment integrity. If the dampers fail in the closed position, no corrective action is required since the reactor zone walls and ceiling are designed to withstand the suction pressure of the SSGT system.

The amendments will allow the removal of the system which will result in disabling the dampers in the closed position.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated? No. With the vacuum relief system disabled and the dampers permanently closed, the system will be incapable of creating an initiating event for any analyzed transient or accident, increasing containment leakage, or degrading other protective systems.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated? The staff is unable to postulate any such accidents which would become possible as a result of these amendments.

3. Does the proposed amendment involve a significant reduction in the margin of safety? No. The proposed amendment will increase the margin of safety by eliminating the possibility of failed-open dampers.

On the above, the staff has made a proposed determination that the application involves no significant hazards consideration.


NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–236, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: November 23, 1984 and December 13, 1984.

Description of amendment request: The amendments would modify "Orders Confirming Licensee Commitments on Post-TMI Related Issues" dated March 25, 1983. Specifically, the amendments would extend the Units 2 and 3 completion schedules for noble gas and radiodine effluent monitors, required by NREG-6737 Items I.F.1.1 and I.F.1.2, from December 31, 1984 to "prior to Unit 2 startup in Cycle 6" (about July 12, 1985).

Basis for proposed no significant hazards consideration determination: TVA received Confirmatory Orders for Browns Ferry Nuclear Plant, Units 1, 2 and 3 dated March 25, 1983 on the above subject items. These Orders require the licensee to install noble gas effluent monitors with local readout capability and provide capability for effluent monitoring of iodine with local readout capability by a deadline of December 31, 1984 for Units 2 and 3. The deadline for
monitoring noble gas and radiodine effluents (albeit with a smaller range than required by NUREG-0732) and has the capability for monitoring through grab sampling, the proposed amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety. The staff, therefore, has made a preliminary determination that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee


Description of amendment requests:

1. The licensee requested deletion of certain flow rate monitors from the Technical Specification tables on radiactive gaseous effluent monitoring instrumentation since they serve no purpose during off-normal or accident conditions. The flow rate monitors are located in the auxiliary building ventilation system which is isolated whenever off-normal conditions occur. The auxiliary building gas treatment system starts automatically coincident with the vent system isolation.

2. The licensee proposes changes to the radiological effluent Technical Specifications and the organization specifications at the facility. With respect to radiological effluents, changes are proposed to the definitions, Limiting Conditions for Operation, and surveillance requirements. The changes are expected to eliminate unnecessary testing and sampling and to modify overly restrictive action statements. The majority of the requested revisions are to make the Technical Specifications in these areas conform with NUREG-0472, Revision 3. With regard to proposed organizational specification changes, the licensee has carried out a major reorganization which gives added responsibility and resources to each of the nuclear plant management organizations. The proposed changes provide a single line of authority and responsibility for more direct control by management at the site. The revisions to the Technical Specifications reflect these organizational changes.

3. The licensee requests changes to the Technical Specification table on Secondary Containment Bypass Leakage Paths. One change would delete two penetrations from the table as being incorrect since they only penetrate the primary containment. The post-accident sampling facility penetrations need to be added to the table to ensure compliance with 10 CFR 50 Appendix J.

4. The licensee requests eliminating the table on Containment Penetration Conductor Overcurrent Protection Units. This table is already included in the applicable surveillance instructions of these devices, and the licensee believes no purpose is served by having duplicate listings.

5. A change was made to the Technical Specifications for operational limits associated with the pressurizer spray nozzles; however, the Bases statements for this change were not updated to reflect this modification. This revision will correct the inadvertent omission.

Basis for proposed no significant hazards consideration determinations:
The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14670). One of the examples of actions likely to involve no significant hazards consideration is any change that either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed changes (1–2) involved here are similar to the example in that there may be some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change clearly remain within all acceptable criteria.

For proposed change (1) the flow monitors are part of a system which is isolated during an accident; consequently the proposed deletion of the monitors from the table can be made without an expected change in the previously analyzed postulated accident. For change (2) the revisions to the Technical Specifications are expected to improve plant operations and reduce workload without a
decrease the margin of safety. Also, the second part of the change involves revisions to organizational specifications that should strengthen the overall safety of plant operations.

A second example provided in the Federal Register is a purely administrative change: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Proposed changes (3), (4), and (5) are similar to this example (1) in that the tables are being revised to achieve consistency with other portions of the Technical Specifications, surveillance procedures, and analyses related to these changes. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room
Location: Chattanooga-Hamilton County Bicentennial Library, 1201 Broad Street, Chattanooga, Tennessee 37401.
Attorney for licensee: Mr. Herbert S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, Et1B33, Knoxville, Tennessee 38042.

NRC Branch Chief: Elinor G. Adensam.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 15, 1983 and August 1, 1984.

Description of amendment request: The request for amendment was initially noticed on April 25, 1984 (49 FR 17835). This notice included clarifying information provided by the licensee in a subsequent submittal dated November 16, 1984. The amendment request would revise the Technical Specifications to be in accordance with the new License Event Report System as stipulated in Section 50.723 to 10 CFR Part 50 and the immediate notification requirements for operating nuclear power reactors as provided in Section 50.724 to 10 CFR Part 50. The new rules became effective January 1, 1984. The amended regulations clarify reporting criteria and require early reports only on those matters of value to the exercise of the Commission's responsibilities and will provide more useful reports regarding the safety of operating nuclear power plants. In addition, the Licensee Event Report system establishes a single set of requirements that apply to all operating nuclear power plants. The proposed changes to the Technical Specifications were prepared with the guidance of NRC Generic Letter No. 83-43 which requested all licensees to revise their Technical Specifications to conform with 10 CFR Part 50.723 and 50.724.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (See 48 FR 24370). One of the examples of actions involving no significant hazards relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the systems or component specified in the Standard Review Plan. The proposed change would represent a relaxation in the time requirements as presently specified in the NA-182 TS. However, the proposed change is in conformance with the NRC approved Standardized TS for Westinghouse Pressurized Water Reactors (PWR) Revision 4 issued fall, 1981. TS 3.0.3 specifies, in part, the time requirements that a unit shall be placed in Mode 3 (Hot Standby), Mode 4 (Hot Shutdown) and Mode 5 (Cold Shutdown) in the event a Limiting Condition of Operation (LCO) and/or associated Action Statement Requirements cannot be satisfied because of circumstances in excess of those addressed in a specification. Presently, the NA-1 TS 3.0.3 states “When a LCO for operation is not met, except as provided in the associated Action requirements, the unit shall be placed in a Mode in which the specification does not apply by placing it, as applicable, in: (1) At least HOT STANDBY within 1 hour; (2) At least HOT SHUTDOWN within the next 6 hours, and (3) At least COLD SHUTDOWN within the following 24 hours.” For NA-2, TS 3.0.3 presently states the time requirement to be: (1) At least HOT STANDBY within 1 hour; (2) At least HOT STANDBY within the next 6 hours; and (3) At least COLD SHUTDOWN within the following 30 hours.

The proposed change would provide consistency to the NA-182 TS 3.0.3 and be in conformance with the NRC approved Standardized TS for Westinghouse PWR by stating: "When a Limiting Condition for Operation is not met, except as provided in the associated ACTION requirements, within one hour ACTION shall be initiated to place the unit in a MODE in which the Specification does not apply by placing it, as applicable, in: (1) At least HOT STANDBY within 6 hours; (2) At least HOT SHUTDOWN within the next 6 hours, and (3) At least COLD SHUTDOWN within the following 24 hours."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (See 48 FR 24370). One of the examples of actions involving no significant hazards relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the systems or component specified in the Standard Review Plan. The proposed change would represent a relaxation in the time requirements as presently specified in the NA-182 TS. However, the proposed change is in conformance with the NRC approved Standardized TS for Westinghouse PWR, Revision 4, Fall 1981, which is appropriately applied to NA-182. Thus, the proposed change falls within the scope of the example cited above. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room
Location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 535, Richmond, Virginia 23212.

NRC Branch Chief: James R. Miller.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 16, 1984 and November 16, 1984.

Description of amendment request: The request for amendments was initially noticed on April 25, 1984 (49 FR 17835). This notice included clarifying information provided by the licensee in a subsequent submittal dated November 16, 1984. The amendment request would revise the Technical Specifications to be in accordance with the new License Event Report System as stipulated in Section 50.723 to 10 CFR Part 50 and the immediate notification requirements for operating nuclear power reactors as provided in Section 50.724 to 10 CFR Part 50. The new rules became effective January 1, 1984. The amended regulations clarify reporting criteria and require early reports only on those matters of value to the exercise of the Commission's responsibilities and will provide more useful reports regarding the safety of operating nuclear power plants. In addition, the Licensee Event Report system establishes a single set of requirements that apply to all operating nuclear power plants. The proposed changes to the Technical Specifications were prepared with the guidance of NRC Generic Letter No. 83-43 which requested all licensees to revise their Technical Specifications to conform with 10 CFR Part 50.723 and 50.724.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (See 48 FR 24370). One of the examples of actions not likely to involve a significant hazards consideration is a purely administrative change to the technical specification; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed changes to the Technical Specifications are in response to the Commission's new rules as specified in 10 CFR 50.723 and 50.724. The proposed changes fall within the scope of the example cited above. Therefore, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room
Location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department,
University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 553, Richmond, Virginia 23212.

NRC Branch Chief: James R. Miller.

Virginia Electric and Power Company et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 28, 1984.

Description of amendment request:
The proposed changes to the NA-182 Technical Specifications would include several items which were inadvertently left out of the licensee's Radiological Effluent TS (RETS) submittals of December 16, 1982 and February 25, 1983. These submittals were subsequently approved by the NRC on May 5, 1983 by way of Amendment Nos. 48 and 31 for NA-182, respectively. Specifically, a gasous release path was inadvertently omitted. The proposed change would include the Containment Vacuum Steam Ejector (Hopper) as a gasous release path that should be monitored. In addition, the proposed change would specify the figure for the Low Population Zone in the appropriate NA-182 TS. This figure was inadvertently omitted in the approved amendments. In addition, the location of the Meteorological Tower was inadvertently omitted from the original submittals and the proposed change would include the location in the appropriate NA-182 TS. Finally, the proposed change would correct an administrative error in a number NA-182 TS Table number.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of these standards by providing guidance in certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration is a purely administrative change to the technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed changes fall within the scope of this example. Therefore, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23089 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 553, Richmond, Virginia 23212.

NRC Branch Chief: James R. Miller.

Virginia Electric and Power Company et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendment: November 2, 1984.

Description of amendment request:
The proposed changes to the Technical Specifications (TS) reflect the reorganization within the Nuclear Operations Department, Quality Assurance Department, Emergency Planning, and Security Department. In addition, the proposed changes add the requirement to retain records for at least five years where the Station Emergency Plan and Station Security Plan and implementing procedures are annually audited.

Requests for changes to the NA-182 TS regarding the licensee's organization were submitted on March 16, 1982, June 24, 1982 and July 1, 1983 and were initially noticed in the Federal Register on August 23, 1983 (48 FR 38382). An additional proposed change regarding the licensee's corporate structure was submitted on October 13, 1983. However, with the passage of time and an accelerated rate of corporate changes, the licensee incorporated all of the previous and presently viable changes into a single proposed change dated November 2, 1984 and cancelled the previous proposed changes dated March 16, 1982, June 24, 1982, July 1, 1983 and October 13, 1983.

Several reorganizations in the Nuclear Operations Department have occurred in the past few years. The title of the Manager, Nuclear Operations and Maintenance has been upgraded to the Vice President Nuclear Operations. The position of the Manager, Nuclear Operations and Maintenance has been renamed the Manager, Nuclear Operations Support and the title of the Manager, Nuclear Technical Services has been renamed the Manager, Nuclear Programs and Licenses.

A newly created position is the Assistant Station Manager (Nuclear Safety and Licensing). He reports to the Station Manager and assumes certain responsibilities and authorities previously held by the Station Manager and Assistant Station Manager (Operations and Maintenance) in the area of the Station Nuclear Safety and Operating Committee. He also has responsibility and authority for emergency planning, the safety engineering staff and licensing. The title of the other Assistant Station Manager before the creation of the Assistant Station Manager (Nuclear Safety and Licensing) has been changed to the Assistant Station Manager (Operations and Maintenance). His responsibility and authority have not changed.

The creation of the Assistant Station Manager (Nuclear Safety and Licensing) enhances the level of technical interface and functional independence of the corporate and plant staff involved in nuclear safety and licensing.

The Technical Analysis and Control Group has been deleted. The Section Supervisor, Administrative Services has been renamed Director, Administrative Services and reports to the Manager, Nuclear Operations Support. The title of the Director, Operations and Maintenance Services has been changed to the Director, Operations and Maintenance Support. The titles of the Section Supervisor, Training and Section Supervisor, Operation and Maintenance Support have been deleted. The function of emergency planning has been added in the Nuclear Operations Department. The Director, Emergency Planning will report to the Manager, Nuclear Programs and Licensing. The title of the Director, Chemistry and Health Physics has been revised to Director, Health Physics. The chemistry function will be the responsibility of the Director, Chemistry and Health Physics. These reorganization changes result in a redistribution of existing authorities and responsibilities to enhance management controls in selected areas.

Reorganizations in the Quality Assurance Department have occurred in the past few years. The title of the Manager-Quality Assurance, Operations has been revised to be the Executive Manager-Quality Assurance. The title of the Nuclear Power Resident Quality Control Engineer has been changed to the Nuclear Power Station Manager Quality Assurance and he reports to the Executive Manager-Quality Assurance. In addition, the titles Director-Quality Assurance, Nuclear Operations and Director-Quality Assurance, Operations have been deleted. Having the Nuclear Power Station Manager Quality Assurance report directly to the Executive Manager-Quality Assurance will enhance the Quality Assurance Program of the Company.

A new department called Maintenance and Performance Services has been created. The creation of the Maintenance and Performance Services Department will aid in the quality of training activities at the power stations.
The Superintendent, Nuclear Training reports directly to the Director, Nuclear Training offsite. He also has communication with the Station Manager. The Director, Nuclear Training reports to the Manager Power Training Services and he reports to the Manager, Maintenance and Performance Services. The Maintenance and Performance Services Department will plan, organize, direct and control training, so that effective and efficient technical training is provided to the Nuclear Operations staff. They will assess and recommend specific training requirements for regulatory agencies as applicable and coordinate program offerings as necessary.

The title of the Executive Vice President-Power has changed to the Executive Vice President and Chief Operating Officer. The Executive Vice President-Power previously issued a management directive, on an annual basis to all station personnel, the responsibilities of the Control Room and command function of the Shift Supervisor. The Senior Vice President-Power Operations will sign the management directive on the Shift Supervisors' responsibilities and issue this to all station personnel on an annual basis. This, the proposed change will provide higher corporate responsibility in preparing the annual directive for the responsibilities of the Control Room command function of the Shift Supervisors.

The Security Department has also had a reorganization. The Station Security Supervisor reports to the Director, Nuclear Security at the corporate office. The Station Security Supervisor continues to have communications with the Supervisor, Administrative Services at the Station.

There is a proposed change to the referenced ANSI standard on Facility Staff Qualifications (Section 6.3) and Training (Section 6.4) which reflects the ANSI standard specified in the licensees' QA Topical Report, "Quality Assurance Program Operations Phase." Amendment 4, with respect to the licensees' position on NRC Regulatory Guide 1.8—"Personnel Qualification and Training". The QA Topical Report was approved on October 6, 1982. Thus, the change amends the Technical Specifications to make them consistent with the NRC approved QA Topical Report. The specified change replaces ANSI N18.1-1971 with ANSI 3.1-(12/79 Draft.) It is noted that ANSI 3.1-(12/79 Draft) meets or exceeds the requirements of the older ANSI standard presently specified in the TS.

Finally, the proposed changes would revise the TS to conform to 10 CFR 50.54(1) and 10 CFR 73.469(6), respectively, which stipulate the retention of records for at least five years when the Station Emergency Plan and Station Security Plan, respectively, are audited on an annual basis.

**Basis for proposed no significant hazards consideration determination:**

The Commission has provided guidance concerning the application of these standards by providing certain examples which were published in the Federal Register on April 6, 1983 (48 FR 14670). Examples of actions not likely to involve significant hazard consideration include actions specified as (i) purely administrative changes to the Technical Specifications, and (ii) changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications.

The changes proposed in the application for amendments fall within the scope of these examples. While the proposed changes in the corporate structure are administrative in nature and fall within the scope of example (i), it is noted that the proposed changes do not affect any of the operating parameters of the facility or the acceptability of the licensee's organization in terms of its technical capability or, as appropriate, its functional independence. In fact, the proposed changes enhance managerial attention of safety activities of the nuclear units since the plant managers now report directly to a Vice-President. In addition, the creation of the Assistant Station Manager (Nuclear Safety and Licensing) is an important upgrade in liaison between corporate and plant staff directly involved in nuclear safety and licensing. Also, the appointment of a Nuclear Power Station Manager, Quality Assurance, and a Director-Emergency Planning to the Nuclear Operations Department provide increased visible attention for these functions. In addition, the proposed changes assign greater corporate responsibility and attention in the preparation of the directive defining the Control Room command function of the Shift Supervisors.

Finally, the proposed changes requiring that records be retained for at least five years with respect to Emergency Planning and Station Security fall within the scope of example (ii) since this record retention is specified in 10 CFR 50.54(1) and 10 CFR 73.469(6), and this imposes an additional restriction or control. Accordingly, based on all of the above, the Commission proposes to determine that these changes involve no significant hazards consideration.

**Local Public Document Room Location:** Board of Supervisors Office, Kewaunee County Courthouse, Kewaunee, Wisconsin 53040.

**Date of amendment request:** November 30, 1984.

**Description of amendment request:** This amendment requests a change to the nuclear peaking factor limits due to higher fuel burnup due to licensee's use of Exxon Nuclear Company fuel during next reload in 1985. The effect of steam generator tube plugging is also considered.

**Basis for proposed no significant hazards consideration determination:**

The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14670) of actions likely to involve no significant hazards consideration. One example of actions involving no significant hazards consideration is a change that relates to "(i) For a nuclear power reactor, a change resulting from a nuclear core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable." The fuel proposed for use at Kewaunee is within the fuel design bases of previously used fuel and within the bounds of previous safety analyses. We conclude the requested change is similar to the Commission example (iii).

Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

**Local Public Document Room Location:** University of Wisconsin
The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Arkansas Power and Light Company, Docket No. 59–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 12, 1984.

Brief description of amendment: The amendment would provide additional operability requirements, limiting conditions for operation and surveillance requirements related to the Emergency Feedwater System (EFW) as a result of the EFW upgrade modifications which are required by NUREG-0737, Item II.E.1.2, Auxiliary Feedwater System Automatic Initiation and Flow Indication.

Date of publication of individual notice in Federal Register: November 19, 1984. 49 FR 45679.

Expiration date of individual notice: December 19, 1984.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 59–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: October 9, 1994.

Brief description of amendment: The amendment would permit the Reactor Coolant System (RCS) to be heated above 280 °F with the reactor subcritical and with 16 of the 18 steam system safety valves not operable (they would be gagged to prevent them from opening) and with 2 of the 16 safety valves set to open at higher pressures but low enough to provide overpressure protection. This amendment would allow the licensee to perform the 10-year hydrostatic test of the ANO–1 steam system as required by the Technical Specifications. The RCS would be heated by the use of Reactor Coolant pump operation and, therefore, the ANO–1 steam system would be tested by the use of steam rather than water.

Date of publication of individual notice in Federal Register: November 19, 1984. 49 FR 45680.

Expiration date of individual notice: December 19, 1984.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 59–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: October 15, 1994.

Description of amendment request: The amendment would modify Table 3.5.1.1 of the ANO–1 Technical Specifications in the specification on pressurizer level channels. The amendment would reflect the number of instrument channels to monitor pressurizer level which will be available following the refueling for Cycle 7. The modifications necessitating this change will replace the existing pressurizer monitoring system, consisting of three selectable pressure transmitter inputs, with two independent instrument channels. This modification will provide separate instrument loops for pressurizer level completely independent of the non-nuclear instrumentation system in keeping with the alternate shutdown requirements of Appendix R to 10 CFR 50. The proposed change does not affect the minimum number of channels required to be operable or the minimum degree of redundancy required by the Technical Specifications.

Date of publication of individual notice in Federal Register: December 4, 1984 (49 FR 47463).

Expiration date of individual notice: January 3, 1985.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Northeast Nuclear Energy Company, Docket No. 59–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: November 7, 1984.

Brief description of amendment: The amendment would modify the March 13, 1983 order confirming licensee commitments on Post-TMI related issues for the Haddam Neck Plant relating to the completion date of the control room habitability modifications.

Date of publication of individual notice in Federal Register: December 4, 1984 (49 FR 47463).

Expiration date of individual notice: January 3, 1985.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.
NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Director, Division of Licensing.

Local Public Document Room
location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Alabama Power Company, Docket Nos. 50-318 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: June 25, 1984 supplemented September 24, 1984.

Brief description of amendments: Technical Specifications, Section 6, Administrative Controls, is modified to reflect two Assistant Plant Managers; one responsible for overall plant operations and the other responsible for overall plant administration.

Date of issuance: November 27, 1984.

Effective date: November 27, 1984.

Amendment Nos.: 54 and 45.

Facilities Operating License Nos. NPF-2 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 (49 FR 33355).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1984.

No significant hazards consideration comments received.

Local Public Document Room
location: George S. Houston Memorial Library, 212 W. Burdesaw Street, Dothan, Alabama 36303.

Arkansas Power and Light Company, Docket Nos. 50-313 and 50-360, Arkansas Nuclear One, Unit 1 and Unit 2, Pope County, Arkansas

Date of application for amendment: September 14, 1984, as supplemented January 20, 1984 and May 24, 1984.

Brief description of amendment: The amendments changed the surveillance intervals for leak testing of certain sealed radioactive sources from every six months to every eighteen months.

Date of issuance: November 19, 1984.

Effective date: November 19, 1984.

Amendment Nos.: 67 and 59.

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 (49 FR 23303).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: January 5, 1982.

Description of amendment request: The amendment revised the Technical Specifications (TS) pertaining to the fire detection instrumentation.

Date of issuance: November 23, 1984.

Effective date: November 23, 1984.

Amendment No.: 59.

Date of initial notice in Federal Register: July 20, 1983 (48 FR 33076 at 33077).

The Commission's related evaluation of the amendment is contained in a letter dated November 23, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: April 13, 1984, as supplemented by letter dated April 29, 1984.

Brief description of amendment: The amendments revised the Technical Specifications to incorporate the requirements of Appendix I of 10 CFR 50 as the Radiological Effluent Technical Specifications (RETS). They provide new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring, concentration, dosage and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. In addition, some changes are made in administrative controls, specifically dealing with the Process Control Program and the Offsite Dose Calculation Manual.

Date of issuance: December 14, 1984.

Effective date: January 1, 1985.

Amendment Nos.: 89 and 69.

Facility Operating Licenses Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 (48 FR 33353 at 33354).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1984.
No significant hazards consideration comments received: No.

Local Public Document Room
location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: August 9, 1984, as modified on October 29, 1984.

Brief description of amendment: This amendment replaces the carbon dioxide (CO₂) system Technical Specifications with similar specifications for a Halon fire suppression system recently installed in the cable spreading room.

Date of issuance: November 27, 1984.

Effective date: December 4, 1984.

Amendment Nos.: 78 and 105.

Facility Operating License Nos. DPR-71 and DPR-82. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 49 FR 28904.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: June 6, 1984.

Brief description of amendment: The amendments revise the Technical Specifications to more clearly define the operational conditions and the allowed use of the reactor mode switch by adding and revising footnotes in Table 1.2.

Date of issuance: December 4, 1984.

Effective date: December 4, 1984.

Amendment Nos.: 79 and 103.

Facility Operating License Nos. DPR-71 and DPR-82. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 49 FR 33358.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: September 4, 1984, as supplemented October 22, 1984.

Brief description of amendment: The amendments revise Technical Specifications 3.3.1 and 3.3.2 to allow alternate actions to be taken rather than placing an inoperative channel of the Reactor Protection System or Isolation System in the tripped condition when this would cause the Trip Function to occur.

Date of issuance: December 4, 1984.

Effective date: December 4, 1984.

Amendment Nos.: 78 and 105.

Facility Operating License Nos. DPR-71 and DPR-82. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 49 FR 28904.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: June 6, 1984.

Brief description of amendment: The amendments revise the Technical Specifications to more clearly define the operational conditions and the allowed use of the reactor mode switch by adding and revising footnotes in Table 1.2.

Date of issuance: December 4, 1984.

Effective date: December 4, 1984.

Amendment Nos.: 79 and 103.

Facility Operating License Nos. DPR-71 and DPR-82. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 49 FR 33358.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: September 4, 1984, as supplemented October 22, 1984.

Brief description of amendment: The amendments change the Technical Specifications to permit a one-time extension of the test period for Type B and C local leak rate tests for certain valves from December 12, 1984, or later, until the next refueling outage, which is currently scheduled to begin on or before March 31, 1985. In addition, the test period for the main steam isolation valves is extended 12 days.

Date of issuance: December 10, 1984.

Effective date: December 10, 1984.

Amendment No. 60.

Facility Operating License No. DPR-71. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1984, 49 FR 43820.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket No. 50-374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of application for amendment: February 16, 1979 as supplemented May 3, 1984.

Brief description of amendments: The amendments approve new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring, for effluent concentrations and for treatment of liquid, gaseous and solid wastes. They also incorporate into the Technical Specifications the bases that support the operation and surveillance requirements.

Date of issuance: November 16, 1984.

Effective date: March 15, 1985.

Amendment Nos. 83 and 77.

Provisional Operating Licensing No. DPR-71 and Facility Operating License No. DPR-82. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 49 FR 29695.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60151.

Commonwealth Edison Company, Docket No. 50-374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of application for amendment: September 25, 1984.

Brief description of amendment: This amendment revises the La Salle Unit 2 Technical Specifications to reflect a reactor scram on low control
rod drive pump discharge pressure modification as required for completion by Licensee Condition 2.C.(2).

**Date of issuance:** December 17, 1984.
**Effective date:** December 17, 1984.

**Amendment No. 6.**

**Facility Operating License No. NPF 18.** Amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** October 24, 1984 (49 FR 43810).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1984.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consumers Power Company, Docket No. 50-334, Big Rock Point Plant, Charlevoix County, Michigan

**Date of application for amendment:** August 6, 1984 as supplemented on November 5 and 20, 1984.

**Brief description of amendment:** This amendment allows the Plant Review Committee to review and approve certain documents by a document routing process.

**Date of issuance:** December 10, 1984.
**Effective date:** December 10, 1984.
**Amendment No. 71.**

**Facility Operating License No. DPR-6.** This amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** September 28, 1984 (49 FR 38397).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1984.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

**Date of application for amendment:** August 6, 1984 as supplemented on November 5 and 20, 1984.

**Brief description of amendment:** This amendment allows the Plant Review Committee to review and approve certain documents by a document routing process.

**Date of issuance:** December 10, 1984.
**Effective date:** December 10, 1984.
**Amendment No. 85.**

**Provisional Operating License No. DPR-20.** This amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** September 28, 1984 (49 FR 38397) and September 29, 1984 (49 FR 38397).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

**Date of application for amendment:** August 6, 1984 as supplemented on November 5 and 20, 1984.

**Brief description of amendment:** This amendment allows the Plant Review Committee to review and approve certain documents by a document routing process.

**Date of issuance:** December 10, 1984.
**Effective date:** December 10, 1984.
**Amendment No. 50.**

**Provisional Operating License No. DPR-20.** This amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** September 28, 1984 (49 FR 38397).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1984.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** B.F. Jones Memorial Library, 653 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edson L. Holch Nuclear Plant, Unit No. 1, Appling County, Georgia

**Date of amendment request:** September 17, 1984.

**Brief description of amendment:** The amendment revises the Technical Specifications (TS) to allow up to four previously irradiated fuel bundles to be loaded around each Source Range...
Monitor, delete the description of the control rod material to permit the use of alternative control rod material (hybrid hafnium) in the control rod assemblies, and revise the definition of Core Alternative to clarify that the definition only applies when fuel is in the vessel.

Date of issuance: December 7, 1984.
Effective date: December 7, 1984.
Amendment No.: 102.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 24, 1984, 49 FR 42821.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1984.

No significant hazards consideration comments received:

Local Public Document Room location: Applington County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 59-324, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia.

Date of application for amendment: September 5, 1984.
Brief description of amendment: The revisions to the TSs change the Limiting Safety System Settings, the Limiting Conditions for Operation, the Surveillance Requirements and their supporting bases to support low-low set logic and Analog Transmitter Trip System (ATTS) modifications.

Date of issuance: December 7, 1984.
Effective date: December 7, 1984.
Amendment No.: 103.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 24, 1984, 49 FR 42819.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1984.

No significant hazards consideration comments received:

Local Public Document Room location: Applington County Public Library, 301 City Hall Drive, Baxley, Georgia.

Indiana and Michigan Electric Company, Docket No. 59-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan.

Date of application for amendment: August 23, 1984, supported by Exxon Nuclear letters dated August 22 and 23, 1984.

Brief description of amendment: The amendment revises the Technical Specifications for burnup dependent core physics parameters for Exxon fuel left in Unit 1 and for increases in the heat flux hot channel factor, F sub Q, for Westinghouse fuel in Unit 1.

Date of issuance: November 29, 1984.
Effective date: November 29, 1984.
Amendment No.: 82.

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.


No significant hazards consideration comments received:


Date of application for amendment: September 7, 1984.
Brief description of amendment: The amendment changes the Technical Specifications to incorporate Limiting Conditions of Operation and Surveillance Requirements for the low low setpoint logic modification. The low low setpoint logic modification is designed to ensure a minimum water leg clearing time between any safety relief valve closure and subsequent actuation to minimize thrust loads as part of the generic Mark I containment modification program. We issued the review and approval of the low low setpoint logic modification by letter dated March 19, 1984 with an accompanying Safety Evaluation.

This amendment also reduces the Limiting Condition of Operation for the maximum suppression pool water volume, so that the water volume is consistent with the analysis supporting the Mark I containment modification program.

Date of issuance: November 16, 1984.
Effective date: November 16, 1984.
Amendment No.: 30.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 28, 1984 49 FR 38403.
By letters dated September 25 and October 25, 1984, the licensee submitted additional supporting information. This supplemental information was not considered by the staff when the initial notice was published in the Federal Register on September 28, 1984. The information was clarifying in nature and therefore, the conclusions reached in the original notice for no significant hazard considerations are still acceptable.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1984.

No significant hazards consideration comments received:

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Pennsylvania Power & Light Company, Docket No. 59-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania.

Date of application for amendment: April 10, 1984 and May 18, 1984.

Brief description of amendment: This amendment changes Technical Specifications by modifying the temperature limit for determining the spray pond operable. This amendment also revised Technical Specifications as related to Special Reporting.
requirements discussed in NRC Generic Letter 83-45 dated December 19, 1983, and in response to changes in 10 CFR 50.72 and 10 CFR 50.73.

Date of issuance: November 14, 1984.
Effective date: November 14, 1984.
Amendment No.: 26.

Facility Operating License No. 14: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 20, 1984 (25387-25388) and August 22, 1984 (33365-33367).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power & Light Company, Docket No. 59-338, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: April 10, 1984.

Brief description of amendment: This amendment changed Technical Specifications by modifying the temperature limit for determining the spray pond operable.

Date of issuance: November 14, 1984.
Effective date: November 14, 1984.
Amendment No.: 3.
Facility Operating License No. 22: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 20, 1984 (25387).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.


Date of application for amendment: May 30, 1984, as revised August 24, 1984, and September 27, 1984.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to permit operation with increased core flows and decreased feedwater temperatures during the remainder of Cycle 6 operation for Unit 3. This amendment will also provide restrictions in operation in regions of potential core thermal-hydraulic instability and provide surveillance and corrective actions under conditions of marginal stability. Peach Bottom Atomic Power Station, Unit 3, presently is restricted from single loop operation at thermal power greater than 60% of the rated thermal power. This amendment will permit the removal of this restriction after the thermal-hydraulic TSs are implemented.

Date of issuance: December 3, 1984.
Effective date: December 3, 1984.
Amendment No.: 107.
Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 10, 1984, 49 FR 32135 (corrected August 30, 1984, 49 FR 34434) and October 24, 1984, 49 FR 42823.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1984.

No significant hazards consideration comments received: No.


Portland General Electric Company, et al., Docket No. 59-335, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: June 12, 1984.

Brief description of amendment: The amendment allowed a +1035 tolerance to the required hydrogen mixing system flowrate of 2900 cubic feet per minute.

Date of issuance: December 11, 1984.
Effective date: December 11, 1984.
Amendment No.: 93.
Facility Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 (49 FR 33363 at 33366).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1984.

No significant hazards consideration comments received: No comments received.

Location of Local Public Document Room: Multnomah County Library, 601 S.W. 10th Avenue, Portland, Oregon.

Power Authority of the State of New York, Docket No. 59-255, Indian Point Nuclear Generating Units 3 and 4, Westchester County, New York.

Date of application for amendment: June 6, 1983, as faciliated by letter dated September 30, 1983.

Brief description of amendment: The amendment revises the Radiological Effluent Technical Specifications and implements those revisions as part of the license.

Date of issuance: December 7, 1984.
Effective date: December 7, 1984.
Amendment No.: 51.
Facilities Operating License No. DPR-56: Amendment revised the Technical Specifications [license] (both).

Date of initial notice in Federal Register: August 23, 1983 (48 FR 38520), as ranoched (49 FR 23229).

The Commission's related evaluation of the amendment is contained in a
Facility Operating Licenses Nos. DPR-70 and DPR-75: Amendments revised the Technical Specifications.

Date of application for amendment: April 2, 1984 as supplemented June 12, 1984.

Brief description of amendment: The amendment approves an increase in the storage capacity of the spent fuel pool from 993 to 1016 fuel assemblies.

Date of issuance: November 14, 1984.

Effective date: November 14, 1984.

Amendment No. 85.

Provisional Operating License No. DPR-10: Amendment revised the Technical Specifications.

Date of application for amendment: February 28, 1984.

Brief description of amendment: The amendment approves an increase in the storage capacity of the spent fuel pool from 993 to 1016 fuel assemblies.

Date of issuance: November 14, 1984.

Effective date: November 14, 1984.

Amendment No. 85.

Provisional Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of application for amendment: February 28, 1984.

Brief description of amendment: The amendment approves an increase in the storage capacity of the spent fuel pool from 993 to 1016 fuel assemblies.

Date of issuance: November 14, 1984.

Effective date: November 14, 1984.

Amendment No. 85.

Provisional Operating License No. DPR-12: Amendment revised the Technical Specifications.

Date of application for amendment: May 23, 1984, and supplemented November 27, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to allow installation of a P-9 interlock which would prevent a direct reactor trip following a turbine trip at or below 50% of reactor power.

Date of issuance: November 30, 1984.

Effective date: November 30, 1984.

Amendment No. 34.

Facility Operating License No. NPF-12: Amendment revised the Technical Specifications.

Date of application for amendment: November 14, 1984.

Brief description of amendment: The amendment approves an increase in the storage capacity of the spent fuel pool from 993 to 1016 fuel assemblies.

Date of issuance: November 14, 1984.

Effective date: November 14, 1984.

Amendment No. 84.

Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: August 22, 1984 (49 FR 33370), March 22, 1984 (49 FR 10743) and August 23, 1983 (48 FR 38421).

The Commission’s related evaluation of the amendment is contained in the Safety Evaluation dated November 28, 1984. No significant hazards consideration comments received.


Southern California Edison Company, Docket No. 50-203, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of Application for Amendment: September 20, 1984 as supported August 14, 1984.

Brief description of amendment: The amendment approved addition of a license condition which provides the implementation schedule for the post-accident sampling system. The schedule for this action had been previously covered by NRC Order Confirming Licensee Commitments on Post-TMI Related Issues, dated March 14, 1983.


Provisional Operating License No. DPR-13. Amendment revised the License.

Date of initial notice in Federal Register: October 22, 1984 (49 FR 41300).

The Commission’s related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1984. No significant hazards consideration comments received.


Southern California Edison Company, Docket No. 50-203, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of Application for amendment: June 8, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to address both the auxiliary salt water cooling pump and the screen wash pumps as backup pumps for short periods of time when a salt water cooling pump is inoperaable.


Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.
Effective date: November 28, 1984.
Amendment No. 78. Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: September 26, 1984, 49 FR 38411.
The Commission's related evaluation of the amendment is contained in the Commission's letter dated November 23, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.
The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio
Date of application for amendment: September 25, 1981 (Item 1 only), as supplemented September 28, 1983, and September 11, 1984.
Brief description of amendment: This amendment changes Table 3.0-2, Containment Isolation Valves, to allow for the modified steam generator blowdown and drain system.
Amendment No. 79. Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: April 25, 1984, FR 49 17875 and November 2, 1984, 49 FR 44169.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.
The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio
Date of application for amendment: July 20, 1984.
Brief description of amendment: This amendment modifies the Technical Specifications (TSs) to permit operation for Cycle 5. This cycle has a design length of approximately 390 effective full power days. The modified TSs incorporate revised reactor protection system instrumentation trip setpoints and allowable values, insertion limits for regulating and axial power shaping rods, and power distribution limits.
Date of initial notice in Federal Register: September 26, 1984, 49 FR 38412.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.
The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio
Date of application for amendment: August 27, 1984.
Brief description of amendment: The amendment changes Surveillance Requirement 4.4.8-1.2 and associated Table 4.4-5 which relates to the reactor vessel material surveillance program, to reflect changes in operating cycle length and fuel loading scheme. The amendment also includes changes to the Basis to delete redundant information and clarify, with specificity, the basis for the withdrawal schedule.
Date of initial notice in Federal Register: September 26, 1984, 49 FR 38412.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.
The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio
Date of application for amendment: January 15, 1984.
Brief description of amendment: The amendment deletes TS 4.8.1.1.2.C.6 which required verification on a simulated loss of a diesel generator (with offsite power not available) that loads are shed from the emergency bypasses and that subsequent loading of the diesel generator is in accordance with design equipments. Deletion of TS 4.8.1.1.2.C.6 is in conformance with the provisions of NRC Generic Letter No.
No significant hazards consideration comments received: No.
Local Public Document Room
location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: December 30, 1983 as supplemented June 4, 1984.

Brief description of amendments: The amendments revise the NA-102 Technical Specifications Table 3.3.1, Reactor Trip System, and correct an administrative error which presently specifies the P-7 reactor trip interlock setpoint is "pressure equivalent of 10% rated thermal power." Correction of the administrative error specifies the P-7 interlock setpoint is "pressure equivalent of 10% rated turbine power" which is in conformance with the North Anna Setpoint Study and Precautions Limitations, and Setpoints Documentation and allows the affected interlock setpoint to operate as approved and designed.

Date of issuance: December 6, 1984.
Effective date: December 6, 1984.
Amendment Nos.: 69 and 44.
Facility Operating License Nos. NPF-4 and NPF-7.

Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 (49 FR 33353 at 33375).

The Commission’s related evaluation of the amendments is contained in a Safety Evaluation dated November 28, 1984.

No significant hazards consideration comments received: No.
Local Public Document Room
location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 26, 1983 as supplemented March 30, 1984.

Brief description of amendments: The amendments allow the submittal of the Core Surveillance Report at less than the presently specified 60 days prior to initial criticality for each reload cycle upon specific written approval by the NRC. In addition, in the event the PWR limit should change requiring a new Core Surveillance Report submittal or an amended submittal, it will be submitted 60 days prior to the date the limit would become effective unless otherwise approved by Commission letter. The amendments are in conformance with the stipulations of NUREG-0452, Revision 4, Standard Technical Specifications for Westinghouse PWRs, dated fall 1981 which are appropriately applied to NAs 1 & 2.

Date of issuance: December 3, 1984.
Effective date: December 3, 1984.
Amendment Nos.: 53 and 43.
Facility Operating License Nos. NPF-4 and NPF-7.

Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 (49 FR 33353 at 33374).

The Commission’s related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 1984.
facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this monthly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of
Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration. Details are contained in the individual notice as cited.

Florida Power and Light Company, Docket Nos. 59-256, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: March 14, 1984, and supplemented on July 2 and 23, August 14 and 22, September 10 and 28, October 5, 9, 18 and 26, and November 16, 1984.

Brief description of amendments: The amendments would permit the expansion of the spent fuel storage capacity for Turkey Point Plant Units 3 and 4. This expansion would be accomplished by reracking the existing spent fuel storage pools with neutron absorbing (poison) spent fuel racks composed of individual cells made of stainless steel. Reracking the spent fuel pools would increase the Turkey Point Plant Units 3 and 4 storage capacities from 821 to 1034 spaces for each of the units. The new fuel storage racks will be arranged in two discrete regions within each pool. Region 1 will consist of 298 locations which will normally be used for core off-loading. Region 2 will consist of 1118 locations and will provide normal storage for spent fuel assemblies meeting required burnup considerations. The existing fuel storage racks have a nominal center-to-centerline spacing of 13.7 inches. The new Region 1 fuel storage racks will have a 10.0 inch centerline-to-centerline spacing and Region 2 will be 9.0 inch centerline-to-centerline spacing. The major components of the fuel rack assemblies are the fuel assembly cell, Boraflex (neutron absorbing) material and the wrapper. The wrapper covers the Boraflex material and provides venting of the Boraflex to the pool environment.

The effective multiplication factor (k_{eff}) of the fuel assembly array is designed to maintain the required subcriticality of (k_{eff}) equal to or less than 0.95 for both Regions 1 and 2. The transmittal letter requesting the amendments dated March 14, 1984, as supplemented includes the requested Technical Specification changes, the licensee's determination on significant hazards considerations and the supporting Spent Fuel Storage Facility Analysis Report.


Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of individual notice in Federal Register: November 29, 1984 (49 FR 46832).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1984 and Environmental Assessment dated November 14, 1984. Significant hazards consideration comments have been reviewed.

Source: Center for Nuclear Responsibility, Inc. and Joette Lorion.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letters, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 30, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to
intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Commission or by the Chairman of the Atomic Safety and Licensing Board up to fifteen (15) days prior to the date, the Commission or an Atomic Safety and Licensing Board, designated

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity required to be described above.

Amendments revised the Technical Specifications (TSs) to support the operation of Oconee Unit 1 at full rated power during the upcoming Cycle 9. The amendments change the following areas:

1. Core Protection Safety Limits (TS 2.1);
2. Protective System Maximum Allowable Setpoints (TS 2.3);
3. Rod Position Limits (TS 3.5.2); and
4. Power Imbalance Limits (TS 3.5.2).


Facility Operating License Nos. DPR-38, DPR-47 and DPR-55.

Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. Publication in Federal Register October 24, 1984, 49 FR 42918.

No comments were received.

The Commission’s related evaluation of the amendments, finding of exogenous circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 23, 1984.


Local Public Document Room

location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.
Wisconsin Electric Power Company, Docket No. 59-351, Pont Beach Nuclear Plant, Unit No. 2, Town of Two Creeks, Manitowoc County, Wisconsin

*Date of application for amendment:* November 9, as modified November 13, 1984.

*Brief description of amendment:* The amendment incorporates additions to the "Overtemperature delta T" and "Overpower delta T" equations of Technical Specifications 15.2.3.1.B(4) and 15.2.3.1.B(5), respectively. These additions allow for the use of new time constants for temperature lag considerations associated with new resistance temperature detectors.

*Date of issuance:* November 16, 1984.

*Effective date:* November 16, 1984.

*Amendments No.:* 91.

*Facility Operating License No.: DPP-27* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission’s related evaluation is contained in a Safety Evaluation dated November 16, 1984.


*Local Public Document Room location:* Joseph M. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland this 19th day of December 1984.

For the Nuclear Regulatory Commission.

James R. Miller, Chief, Operating Reactors Branch No. 3, Division of Licensing.

*FR Doc. 84-33057 Filed 12-28-84; 8:45 am*

BILLING CODE 7590-01-M

[Docket No. 50-389]

Pennsylvania Power and Light Co.; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules and Inservice Inspection of Nuclear Power Plant Components" to the Pennsylvania Power and Light Company. The relief relates to the hydrostatic test requirements for cut and reweld of ASME Class 2 non-safety-related main steam main leg line for the Susquehanna Steam Electric Station, Unit 2 (the facility) located in Luzerne County, Pennsylvania. The ASME Code requirements are incorporated by reference into the Commission’s rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

In lieu of the hydrostatic test, the licensee will perform a liquid penetrant examination if the repair weld is a socket weld or, a radiographic exam if a full penetration weld is performed. In addition, a VT-2 examination will be performed at normal operating conditions when the line is returned to service. Finally, a VT-2 examination of the weld will again be performed during the first scheduled in-service inspection hydrostatic test for the line.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR Chapter I which are set forth in the related Safety Evaluation Report and letter to the licensee. Pursuant to 10 CFR 51.52 the Commission has determined that granting the relief will have no significant impact on the environment.

For further details with respect to this action, see: (1) The licensee’s letter dated November 2, 1984, (2) the Commission’s letter to the licensee dated December 24, 1984, and, (3) the Commission’s related Safety Evaluation Report. All of these items are available for public inspection at the Commission’s Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 24th day of December 1984.

For the Nuclear Regulatory Commission.

A. Schwencer, Chief, Licensing Branch No. 2, Division of Licensing.

*FR Doc. 84-33683 Filed 12-28-84; 8:45 am*

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric & Gas Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting relief from the requirements of 10 CFR 50.55a to Public Service Electric & Gas Company for the Hope Creek Generating Station.

Environmental Assessment

*Identification of Proposed Action:* Granting of relief from 10 CFR 50.55a would permit the use of various reactor coolant pressure boundary (RCPB) components which were procured to the specifications of an earlier ASME Code than that required by 10 CFR 50.55a. Specifically, the ASME Code, Section III editions and addenda used in the construction of these RCPB components are those that were required at the time of procurement of the components and were based on a construction permit to be issued in 1971. However, the Hope Creek construction permit was not issued until 1979, resulting in the use of codes and standards which are different from those specified in 10 CFR 50.55a.

The affected RCPB components include: (1) Reactor pressure vessel including control rod drive housing, power range monitor in-core housing, and jet pump instrumentation penetration, (2) control rod drive, (3) main steam safety/relief valves, (4) main steam isolation valves, (5) main steam piping, (6) main steam flow elements, (7) reactor recirculation pumps, (8) reactor recirculation shutoff valves, (9) reactor recirculation bypass valves, and (10) reactor recirculation piping.

*The Need for the Proposed Action:* The proposed granting of relief to the requirements of 10 CFR 50.55a is required to assure full compliance with the Commission’s regulations upon licensing of Hope Creek.

*Environmental Impact of the Proposed Action:* There are no environmental impacts of the proposed action. Such relief has previously been requested and granted on behalf of the Limerick Generating Station, Docket Nos. 59-352/353. No adverse environmental impacts have been identified as a result of granting this relief. There is nothing about the proposed granting of relief that would suggest that the probability of releases would be increased.

Granting of relief would not affect non-radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed granting of relief.

*Alternative to the Proposed Action:* Since we have concluded that there is no measurable environmental impact associated with the proposed granting of relief, any alternatives will have either...
The amendments would revise the technical specifications relating to reactor protection instrumentation and electrical power sources (Reference FCN–65 and FCN–142) in accordance with the licensees' applications for amendment dated February 29, April 2, September 11, October 1 and October 3, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not:

1. Involve significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a safety margin.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Both of the proposed changes are similar to example (vi) of 48 FR 14870. Therefore it is proposed that these changes do not involve significant hazards considerations. A description of each of the proposed changes and how each is similar to example (vi) of 48 FR 14870 follows:

1. Proposed Change FCN–65, RTD Response Time

The proposed change would revise Technical Specification (T.S.) 3/4.3.1, "Reactor Protective Instrumentation System" (RPIS). Specification 3/4.3.1 requires that the RPIS be operable and confines the number and type of RPIS channels required, setpoints, response times, and periodic testing required to assure operability. Table 3.3–2, "Reactor Protective Instrumentation Response Times," defines the maximum response times for the RPIS in order to verify that the maximum RPIS response times assumed in the safety analysis are not exceeded and that the RPIS will respond to transients and accidents as analyzed. Specifically, for the low departure from nucleate boiling ratio (DNBR) trip function, Table 3.3–2 specifies a maximum response time of 0.63 seconds for RCS hot and cold leg temperature measurements. The table notes that these response times are based on an RTD response time of six seconds. The proposed change would revise this note to allow RTD response times to be increased to a maximum of 13 seconds provided that RTD response times of greater than six seconds are compensated for with penalty factors applied to DNBR calculations made for the affected channel. The penalty factors would be implemented by adjustments to core power level and control core operating limit supervisory system addressable constants. The required addressable constant adjustments would be defined in two new tables to be included in the technical specifications by the proposed change.

The proposed change is similar to example (vi) of 48 FR 14870 in that increasing the allowed RTD response times may reduce a safety margin, but the results of the change are clearly within all acceptance criteria specified in the SRP. Specifically, SRP Section 7.2, "Reactor Trip System" requires that the reactor trip system automatically initiate a reactor trip in sufficient time to ensure that acceptable fuel design limits are not exceeded. The proposed change would allow increased RTD response times, but would require that such increases be compensated for by applying penalty factors to the calculation of DNBR and local power density (LPD). The use of these penalty factors will assure that in spite of increased RTD response times, the RPIS will continue to automatically initiate a reactor trip in sufficient time to ensure that acceptable fuel design limits are not exceeded. Therefore the RPIS will continue to meet the SRP acceptance criteria and the proposed change is similar to example (vi) of 48 FR 14870. On this basis, the NRC staff proposes that the revised SRP accept these changes.

Southern California Edison Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards, Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–90 and NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), for operation of the San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California.
2. Proposed Change PCN–142, Electrical Power Sources

The proposed change would revise Technical Specification 3/4.8.1.1, “Electrical Power Systems—AC Source—Operating,” which defines the onsite and offsite power sources required to be available when the plant is operating in Modes 1–4. Specification 3.6.1.1 requires operability of two physically independent circuits between the offsite transmission network and the onsite Class 1E distribution system when the plant is in Modes 1–4. At San Onofre Units 2 and 3 the second source of offsite power is provided through the opposite unit’s distribution system. Thus, for Unit 2, one of the two required sources of offsite power is supplied from Unit 2 itself through the Unit 2 reserve auxiliary transformers. The second source of offsite power for Unit 2 is provided through the Unit 3 reserve auxiliary transformers. Unit 3 meets the requirements for the independent offsite power sources in an analogous manner.

The proposed change would revise the surveillance requirement of T.S. 4.8.1.1 and bases Section 3/4.8.3.1 to allow substitution of the unit auxiliary transformer for the reserve auxiliary transformers as a specific unit’s source of offsite power, provided that the main generator disconnect links are removed, i.e. the unit is offline. Thus, with the proposed change, for Unit 2, one of the two required sources of offsite power would be supplied from Unit 2 itself through either the Unit 2 reserve auxiliary transformers or the Unit 2 unit auxiliary transformer, provided that the unit 2 main generator disconnect links are removed. The second source of offsite power would be provided through either the Unit 3 reserve auxiliary transformers or the Unit 3 unit auxiliary transformer provided that the Unit 3 main generator disconnect links are removed. An analogous situation would exist for Unit 3 with the proposed change. This change would result in additional flexibility in meeting the offsite power requirements when one or both units are offline.

The proposed change is similar to example (vi) in that the increased flexibility in meeting offsite power source requirements may in some way reduce a safety margin, but where the result of the change meet all applicable acceptance criteria specified in the SRP Specifically, SRP Section 8.2, “Offsite Power System” requires two separate circuits from the offsite transmission network to the onsite Class 1E power distribution system, adequate physical and electrical separation, and system capacity and capability to supply power to all safety-related loads and other required equipment. The proposed change would allow use of an alternate installed path in providing the required circuits from the offsite transmission network to the onsite Class 1E distribution system. Physical and electrical separation and system capacity would be maintained. Therefore, the proposed change satisfies the SRP acceptance criteria and is similar to example (vi) of 48 FR 14670. On this basis, the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By January 30, 1985, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission’s “Rules of Practice for Domestic Licensing Proceedings” in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner’s right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner’s interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no
significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 322-0930 (in Missouri (800) 342-6703). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 650 Montgomery Street, San Francisco, California 94111.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the applications for amendments which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and at the San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland, this 21st day of December 1984.

For the Nuclear Regulatory Commission.

George W. Knighton, Chief, Licensing Branch No. 3, Division of Licensing, U.S. Nuclear Regulatory Commission.

[FR Doc. 84-3306 Filed 12-28-84; 8:35 am]
[FR Doc. 84-3306 Filed 12-28-84; 8:35 am]
[FR Doc. 84-3306 Filed 12-28-84; 8:35 am]
[FR Doc. 84-3306 Filed 12-28-84; 8:35 am]

(Docket Nos. 59-581 and 59-520)

Southern California Edison Co., et al.;
Concurrence of issuance of Amendments to Facility Operating License and Proposed No Significant Hazard Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15, issued to Southern California Edison Company et al. (the licensee), for operation of the San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California.

In accordance with the licensee's applications for amendment dated July 2, August 7, and October 3, 1984, the proposed change would revise Technical Specifications 3/4.2.4, "DNBR Margin," and 3/4.3.1, "Reactor Protective Instrumentation," and these changes Technical Specification (T.S.) 3/4.2.4 requires that the departure from nucleate boiling ratio (DNBR) margin be maintained within the region of acceptable operation defined by Figures 3.2-1 and 3.2-2. Operating the plant with the DNBR margin within the region of acceptable operation assures that a departure from nucleate boiling (i.e., a degradation of heat transfer resulting in acceptable fuel design limits being exceeded) will not occur during anticipated operational occurrences (AOO's), e.g., a loss of load. T.S. 3/4.3.1 requires that reactor protective instrumentation (RPI) channels be operable and defines surveillance tests which must periodically be performed to verify such operability and actions to be taken when RPI channels are inoperable. Included in the RPI covered by T.S. 3/4.3.1 are the core protection calculators (CPC's) and the control element assembly calculators (CEAC's). The CPC's continuously monitor various reactor parameters and calculate, among other things, DNBR. Information regarding the parameters of the control element assemblies (CEAC's) are used in the CPC calculations. Each of the two CEAC's monitors the CEAC's positions and calculates factors reflecting the overall CEAC configuration which are transmitted to and used in the CPC calculations. Upon detection of an abnormal condition which could result in a departure from nucleate boiling if unchecked (e.g., an AOO), the CPC's generate a reactor trip. Provided that the plant is operating within the region of acceptable operation defined by T.S. 3/4.2.3, at the time of the AOO, the CPC's will trip the reactor in sufficient time to prevent a departure from nucleate boiling.

During normal operation, the core operating limit supervisory system (COLSS) assists the plant operators in maintaining the reactor within the region of acceptable operation. COLSS continuously monitors various plant parameters from which it calculates a power operating limit (POL), which is displayed in the control room. Provided that reactor power is maintained at less than or equal to the COLSS calculated POL, the reactor is operating within the region of acceptable operation.

The DNBR margin has recently been realigned using a power-dependent CPC uncertainty factor and using a statistical combination of uncertainties (SCU). The previous analysis used a constant CPC uncertainty factor and uncertainties combined by the deterministic method. The revised analysis was conducted for both Cycle 1 and Cycle 2 fuel configurations. The purpose of this change is to incorporate the results of the revised DNBR analysis into the technical specifications.

The proposed change also more explicitly defines the actions required if COLSS is out-of-service and one or both CEAC's are inoperable. Specifically, the proposed change includes the following:

a. T.S. 3/4.2.4 requires that DNBR margin be maintained within the region of acceptable operation indicated by Figures 3.2-1 when the COLSS is out-of-service and Figure 3.2-2 when COLSS is out-of-service.

b. Figure 3.2-1 shows the minimum required COLSS-calculated POL based on DNBR for a given reactor power level. Provided that the COLSS POL is greater than that required by Figure 3.2-1 for a given reactor power, the plant is operating in the region of acceptable operation.

c. The proposed change adds a note to Figure 3.2-1 which indicates that the current defined region of acceptable operation is equally applicable with either one or both CEAC's operational. A second COLSS-calculated POL limit, which requires a higher POL (an additional 2.5% of full power) for a given reactor power, is added to define the region of acceptable operation when both CEAC's are inoperable.

When COLSS is out-of-service, DNBR margin is monitored using the CPC's. The COLSS out-of-service DNBR margin
requirements are currently specified by Figure 3.2-2 which relates the required minimum DNBR based on the CPC's to the axial shape index, a measure of power distribution within the core.

The proposed change splits Figure 3.2-2 into two new figures, 3.2-2 and 3.2-3. Figure 3.2-2 defines the required minimum DNBR for reactor operation at greater than or equal to 80% power. Figure 3.2-3 defines the minimum required DNBR for reactor power levels of less than 80%. The current Figure 3.2-2 is split into new figures in order to take advantage of lower measurement and calculation uncertainties at higher power which result in a reduction of the minimum DNBR requirements at higher powers. In addition, in both of the proposed Figures 3.2-2 and 3.2-3, a reevaluation of CPC uncertainty has reduced the minimum DNBR requirements by approximately 10% at all power levels. Thus under the proposed change, when COLSS is out-of-service, the plant will be able to operate at a higher power level (i.e., with lower minimum DNBR).

b. T.S. 3.2.1, Table 3.3-1, Action 6 provides conditions under which operation may continue with one or both CEAC's inoperable. The current Action 6a allows operation to continue for a maximum of seven days with one CEAC inoperable. Action 6b allows plant operation to continue indefinitely when both CEAC's are inoperable provided that linear heat rate (LHR) and DNBR margins are increased, CEA movements and positions are restricted, CEA positions are verified more frequently, and CPC addressable constants are set to indicate that the CEAC's are inoperable. The current Action 6 is operable when an equal to 60% power. The proposed change splits Action 6b, which addresses the inoperability of both CEAC's, into Action 6b with COLSS in-service and Action 6c with COLSS out-of-service. Currently, Action 6b requires that, among other restrictions noted above, the LHR and DNBR margins of T.S. 3.2.1, and T.S. 3.2.4, respectively, be increased by 19% of rated thermal power. This preserves the ability of the CPC's to trip the plant in the event of an AOO in sufficient time to prevent a departure from nucleate boiling. With COLSS in-service, the revised Action 6b references the revised Figure 3.2-1. As noted above, Figure 3.2-1 is revised to include a second COLSS-calculated POL limit line which requires a higher POL for a given reactor power when both CEAC's are inoperable. With COLSS out-of-service, DNBR is monitored by the CPC's. Consequently, the new Action 6c will require that the current value of the BERRI CPC addressable constant be multiplied by the appropriate penalty factor.

c. The following changes of an editorial nature are included to improve clarity and achieve consistency with the substantive proposed changes described above:

(1) A note is added to T.S. 3.3.1, Table 3.3-1, Actions 6a, 6b, and 6c to indicate that the requirements of T.S. 3.1.3.2, "Position Indicator Channels-Operating," must still be met while in Action 6. This specification requires at least two CEA position indicator channels to be operable. This note is not a change since the requirements of T.S. 3.1.3.2 must be met regardless of Action 6. This note merely provides a reminder to the operators.

(ii) A paragraph is added to Bases Section 3/4.1.3, "Moveable Control Assemblies," to state that setting the CPC addressable constant to indicate to the CPC's that one or both of the CEAC's is inoperable does not necessarily constitute inoperability of CEAC from the standpoint of CEA position indication. Thus, a CEA may be indicated to the CPC's to be inoperable but may still show the CEA positions to the operators. This change has no effect other than to identify this fact in the Bases.

(iii) Bases Section 3/4.2.4, "DNBR Margin," is revised to identify the new Figure 3.2-3 described above. In addition, a sentence is added to indicate that uncertainty terms which are already included in the CPC calculations are not included in the DNBR margin. Figures 3.2-2 and 3.2-3, since these figures are intended to apply during steady state operation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (46 FR 14870) of amendments that are considered not likely to involve significant hazards considerations.

Example (vi) relates to a change which either may result in an increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. Example (i) related to a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications.

Standard Review Plan (SRP), Section 4.4, "Fuel System Design," specifies acceptable fuel design limits which must not be exceeded. In addition, SRP Section 7.2 requires that the reactor protective instrumentation system (RPIS) automatically initiates reactor trip to assure that specified acceptable fuel design limits are not exceeded. The proposed change to Figure 3.2-1 described in part (a), above, identifies regions of acceptable operation when one or both CEAC's are inoperable when COLSS is in-service. The proposed Figures 3.2-2 and 3.2-3 define acceptable regions of operation when COLSS is out-of-service. The proposed figures reduce the overall DNBR margin requirements based on reevaluation of overall CPC uncertainties. Operation of the plant within these defined regions of acceptable operation assures with high confidence that the RPIS will trip the reactor in sufficient time to prevent acceptable fuel design limits from being exceeded in the event of an AOO. Because the proposed change prevents acceptable fuel design limits from being exceeded, it satisfies the noted SRP acceptance criteria and, therefore, is similar to Example (vi) of 46 FR 14870.

The proposed change described in part (b), above, will allow continued plant operation beyond seven days with one CEAC inoperable. This is not
currently permitted by the technical specifications. However, the technical specifications currently allow operation to continue indefinitely with both CEAC's inoperable. The proposed change permits the inoperability of one CEAC for greater than seven days provided that the action required with both CEAC's inoperable is taken. The proposed change differentiates between the actions to be taken when both CEAC's are inoperable with COLSS in-service and with COLSS out-of-service. When both CEAC's are inoperable, one of the actions to be taken is to increase thermal margin. The methods proposed for increasing thermal margin are different for COLSS in and out-of-service and, consequently, are different from the existing requirement. However, the resultant margin increases required by the proposed change when both CEAC's are inoperable assure that the RPIS will trap the reactor in sufficient time to permit acceptable fuel design limits from being exceeded. Therefore, the proposed change satisfies the SRP acceptance criteria and is similar to Example (vi) of 48 FR 14870.

The proposed changes described in part (c)(1), above, ensure consistency between the substantive proposed changes described in parts (a) and (b), above, and other technical specifications and the associated bases. Because these proposed changes achieve consistency within the technical specifications, they are similar to Example (i) of 48 FR 14870.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By January 30, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic License Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically identify the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of the proceeding which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period. Provided that its final determination is that the amendment involves no significant hazards consideration, the final determination will consider all public and State comments received.

Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Kighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register Notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 500, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn. David R. Pigott, Esq.
600 Montgomery Street, San Francisco, California 94111, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. The determination will be based upon a balancing of the factors specified in 10 CFR 2.714(c)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission’s Public Document Room, 1717 H Street, NW., Washington, D.C., and at the San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland, this 21st day of December 1984.

For the Nuclear Regulatory Commission.

George W. Knighton,
Chief Operating Reactor Branch #3, Division of Licensing.

[FR Doc. 84-33865 Filed 12-28-84; 8:45 am]
BILLING CODE 7590-01-M

United Electric Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the United Electric Company (the licensee) Facility Operating License No. NPF-30 for the Callaway Plant, Unit 1, located at the licensee’s site in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action: The amendment would revise Technical Specification Table 4.11–1 to include two additional Batch Waste Release Tanks. The proposed amendment is in accordance with the licensee’s request dated October 3, 1984, as supplemented December 6, 1984.

Need for Proposed Action: The proposed amendment is required to permit the addition of two 100,000 gallon tanks which are needed to provide sufficient storage time for secondary effluent to allow sample analysis and to show acceptability of the water prior to release to the environment. The increase in secondary waste comes from the regeneration of the condensate demineralizers. Originally, the volume of waste from regeneration of the condensate demineralizers was estimated at 17,000 gallons per day. Union Electric Company has indicated that recent operating experience has shown waste volumes averaging 43,000 gallons per day. Two additional 100,000 gallon tanks should provide adequate capability based on the revised estimates.

Environmental Impact of the Proposed Action: The proposed amendment would allow for two additional Batch Waste Release Tanks that are needed to handle the estimated volume of secondary liquid waste. However, since the activity collected on the demineralizers is not affected by the increased quantity of demineralizer rinse, the amount of radioactivity released to the environment is the same as predicted in the Environmental Impact Statement. In addition, because the State NPDES effluent discharge requirements will be met which limit chemical constituents and suspended solids, no adverse environmental effect is expected from the increase in effluent volume. Therefore, the increase in effluent volume does not constitute an unreviewed environmental issue and thus the environmental impact of the facility is not adversely affected.

Construction of the Batch Waste Release Tanks will disturb approximately 0.07 acres of land immediately adjacent to the southwest corner of the Radwaste Building. This area was previously disturbed during construction of the plant. No vegetation, mammal, bird or herpetofaunal populations exist in the area. In addition, no historic or archaeological sites exist in the area. Therefore, land-use, terrestrial and aquatic ecology, and historic and archaeological impacts due to construction of the tanks will not exceed estimates given in the Environmental Impact Statement.

All measurable nonradiological environmental effects are confined to the on-site areas previously disturbed during site preparation and plant construction. Therefore, in accordance with the Callaway Plant Operating License, construction of the tanks does not constitute an unreviewed environmental question.

Alternative to the Proposed Action: Since the staff concluded that there is no measurable environmental impact associated with the proposed amendment, an alternative would not provide any significant additional protection of the environment. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operations and would result in reduced liquid waste system control.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Callaway Plant, Unit 1.

Agencies and Persons Contacted: The NRC staff reviewed the licensee’s amendment request and applicable documents referenced therein that support this amendment for the Callaway Plant, Unit 1. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the amendment request dated October 3, 1984 and supplement dated December 6, 1984. These documents are available for public inspection at the Commission’s Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Fulton City Library, 709 Market Street, Fulton, Missouri.

Dated at Bethesda, Maryland this 19th day of December 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,
Acting Assistant Director for Licensing, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-33867 Filed 12-28-84; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14289 (813–63)]

Stone Street Fund 1984; Stone Street Corp., Filing of Application for an Order Amending a Prior Order Exempting Applicants and Related Subsequent Partnerships


Notice is hereby given that Stone Street Fund 1984, a limited partnership (the "Partnership"), 65 Broad Street, New York, New York 10004, and its general partner, Stone Street Corp. ("General Partner", collectively "Applicants"), filed an application on November 7, 1984 (the "application") for an order of the Commission, pursuant to
sections 6(b) and 6(e) of the Investment Company Act of 1940 (the “Act”) amending a prior order the (the “prior order” or “the order”) of the Commission (Investment Company Act Release No. 13921, May 2, 1984). The prior order, pursuant to sections 6(b) and 6(e) of the Act, exempted Applicants and all similar partnerships offered to the same class of investors as the limited partner investors in the Partnership (such partnerships (the “Subsequent Partnerships”), together with the Partnership, “Partnerships”) from all provisions of the Act and the rules and regulations there under except: (1) Sections 9, 17 (with certain exceptions), 30 (with certain exceptions), 36 and 37 of the Act; (2) all sections of the Act necessary to implement the above sections of the Act; and (3) all administrative and jurisdictional sections of the Act, necessary to enforce compliance with the terms of the order as granted. All interested persons are referred to the application on file with the Commission for the statement of the representations contained therein, which are summarized below, and to the application for the prior order filed with the Commission (“prior application”). Such persons are also referred to the Act for the complete text of the provisions referred to herein and in the application.

According to the application, Applicants had represented in the prior application that partnership interests in the Partnerships would be offered only to key employees of Goldman Sachs (as defined in the prior application) who are “accredited investors” under Rule 501(a)(7) of Regulation D under the Securities Act of 1933 (“1933 Act”) and who have had a minimum reportable income from Goldman Sachs in excess of the standard of Rule 501(a)(7) of the 1933 Act in the calendar year immediately preceding his or her investment in the Partnership (“Eligible Employees”). Applicants state that Goldman, Sachs & Co. (as defined in the prior application) has found that the second part of the test (as to income from Goldman Sachs) presents complications and that additional flexibility is needed in the determination of Eligible Employees, primarily in order to deal with the following situations: (i) Eligible Employees who, although limited partners in an earlier Partnership, would not qualify on the basis of their income from Goldman Sachs for a later Partnership (for example, because of illness or maternity leave as a result of which their work and income during a year is interrupted); (ii) key employees who, although not previously Eligible Employees and who would not be eligible on the basis of their income from Goldman Sachs, have recently been promoted or awarded compensation increase such that they will, in the following year, be much more highly compensated than others who are Eligible Employees; and (iii) newly hired key employees who have not previously had income from Goldman Sachs. Therefore, Applicants propose to modify their prior representation to provide that Eligible Employees may be determined to be “accredited investors” under Rule 501(a)(7) of the 1933 Act by reference to income from sources other than Goldman Sachs, provided that each Eligible Employee must have had reportable income (including any profit shares and bonus) from his or her employer or employers of at least $150,000 in the calendar year immediately preceding his or her investment in a Partnership.

Applicants state that the prior application provided that general and limited partners of Goldman, Sachs & Co. would not be eligible to invest in the Partnerships. Applicants propose to modify this provision so that Goldman, Sachs & Co. may permit certain of its limited partners to invest in the Subsequent Partnerships as an additional incentive to leave capital in Goldman, Sachs & Co. The Applicants undertake on behalf of all Subsequent Partnerships that each such limited partner of Goldman, Sachs & Co. permitted to invest in Subsequent Partnerships will be: (i) A former general partner of Goldman, Sachs & Co. (ii) an “accredited investor” under Rule 501(a)(7) of the 1933 Act and (iii) known to Goldman, Sachs & Co. to have a separate direct, wholly-owned subsidiary of Goldman Sachs, provided that each such Partnership, (the “10% undertaking”) would be made by means of a capital contribution through the General Partner. However, that arrangement has proven to present accounting and other complications, not to the Partnerships, but rather to Goldman, Sachs & Co. Therefore, without otherwise modifying the terms and conditions as stated in the prior application, the following modifications are proposed: The Partnership will be restructured so that Stone Street Corp. becomes a direct, wholly-owned subsidiary of Goldman Sachs, & Co. and a general partner with a 1% interest of the Partnership and the remainder of the investment by Goldman Sachs, & Co. will be represented by an interest held by a general partnership of the general partners of Goldman, Sachs & Co.

Further, each Subsequent Partnership will have a separate direct, wholly-owned subsidiary of Goldman Sachs, & Co. and a general partner with a 1% interest of the Partnership and the remainder of the investment by Goldman Sachs, & Co. will be represented by an interest held by a general partnership of the general partners of Goldman, Sachs & Co. holding an interest in such Subsequent Partnership. Applicants submit that in each case only the form of the investment by Goldman Sachs, & Co. will be changed; the economic reality and beneficial ownership will be the same as under the current structure. Applicants represent that each general partner of each Subsequent Partnership will undertake with Stone Street Corp. to be subject to each relevant reference in the prior application to “the General Partner” and to observe the terms and conditions of the prior application.

Applicants request that the investment of such general partnerships in Partnerships not be considered a joint investment by a GS partners’ investment vehicle (as defined in the prior application) for purposes of section
Partnership may not be required to limit its investment. Partnership wishes to take such that the portion of the available investment the joint investment to determine what investment vehicle interested in such Partnership will be permitted three-to-one ratio undertaking; (ii) such one ratio, will in the aggregate meet the investments not meeting the three-to-one ratio provided that (i) modification of the undertaking to investment. Second, Applicants request investment vehicle in such joint added to the amount invested directly Partnership of the amount invested on three-to-one ratio, the share allocable to GS partners' investment vehicle unless the investment with Goldman Sachs or a Partnership by Goldman Sachs or the GS partners' investment vehicle to the detriment of the Partnership. Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 14, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 84-33869 Filed 12-28-84; 8:45 am]
BILLING CODE 2010-01-M

[Release No. 21597 (SR-CBOE-84-29)]

Chicago Board Options Exchange, Inc.; Self-Regulatory Organizations; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, submitted on October 19, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, that would permit closing rotations in expiring series of individual stock options on the last trading day prior to expiration to commence only after the final price of the underlying stock has been established in its primary market or as soon as practicable after 3:00 p.m., whichever is later.1 Open trading in such expiring stock options series will continue to be permitted only until 3:00 p.m., Chicago time.

The proposed rule change would permit closing rotations in expiring series of individual stock options to be priced in relationship to the closing price on the primary market for the underlying stock. CBOE believes that this is necessary for the fair pricing of options during the closing rotation. In addition, CBOE notes that by permitting closing rotations to commence only after the final price of the underlying stock has been established, pricing disruptions during the rotation can be avoided.

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. 21479, November 13, 1984) and by publication in the Federal Register (49 FR 45687, November 13, 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.

John Wheeler,
Secretary.

[FR Doc. 84-33868 Filed 12-28-84; 8:45 am]
BILLING CODE 9990-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as

1 The Commission previously approved another portion of this proposed rule change in Securities Exchange Act Release No. 21479, November 13, 1984, 49 FR 45687, November 13, 1984. The previous Commission approval permitted CBOE to extend open trading in expiring series of index options on the last trading day before expiration from 3:00 p.m. to 3:30 p.m. and eliminated except in unusual circumstances, closing rotations in the expiring index options series.
defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year loans or through the purchase of Debt upon a Small Concern.

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-1887, or Gary Waxman or Sam Farchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7940.

SUPPLEMENTARY INFORMATION:

Background
Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments
Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare the, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB
The following information collection requests were submitted to OMB from November 30-December 17, 1984:

DOT No: 2526
OMB No: 2132-0031
By: Urban Mass Transportation Administration
Title: Unified Planning Work Program (UPWP)
Forms: None
Frequency: Annually
Respondents: State or local governments—Metropolitan Planning Organizations
Need/Use: The UPWP describes all transportation planning activities to be funded during the next two-year period which use Federal Highway and Urban Mass Transportation planning funds. This information is used for the grant review and approval process.

DOT No: 2527
OMB No: 2120-0033
By: Federal Aviation Administration
Title: Representatives of the Administrator—FAR-193
Forms: FAA Forms 8710-2; 8710-6; 8110-14
Frequency: On occasion
Respondents: Individuals desiring appointment as representatives of FAA Administrator
Need/Use: The FAA Act authorizes appointment of qualified individuals to be representatives of the Administrator for examining, testing, and certifying airmen for the purpose of issuing them certificates. The information collected is used by FAA to determine eligibility of the representatives.

DOT No: 2528
OMB No: New
By: Maritime Administration
Title: Service Obligation Compliance Report
Forms: MA-930
Frequency: Annual
Respondents: Graduates of Merchant Marine Academy and State Maritime schools
Need/Use: Report is used to monitor graduates' compliance with their service obligations.

DOT No: 2529
OMB No: New
By: Maritime Administration
Title: Request for Waiver of Service Obligation Requirement: Request for Deferment of Service Obligation; and Request for Review of Waiver/Deferment Decisions
Forms: MA-935, MA-936, MA-937
(Titles of forms above)
Frequency: As required
Respondents: Students/graduates of U.S. Merchant Marine Academy or State maritime schools
Need/Use: Forms provide administrative control for eligible respondents seeking waivers/ deferments from their mandatory service obligation in the U.S. Merchant Marine.

DOT No: 2339
OMB No: 2120-0512
By: Federal Railroad Administration
Title: Assistance to States for Local Rail Service
Forms: None
Frequency: On occasion
Respondents: States
Need/Use: These forms are used by States to apply for local rail service assistance grants, to make financial reports, and to request reimbursements.
By: National Highway Traffic Safety Administration

Title: Glazing Manufacturer Identification Std. 205

Forms: None

Frequency: On occasion

Respondents: Businesses

Need/Use: The purpose of this requirement is to ensure traceability of glass used in automobile, bus, and truck windows to the proper manufacturer for enforcement of safety requirements.

Issued in Washington, D.C. on December 20, 1984.

Jon H. Seymour, Acting Assistant Secretary for Administration.

[Veterans Administration]

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on January 23, 1985 at 9:00 a.m., the Portland, Oregon Regional Office Station Committee on Educational Allowances shall at Room 4427, Federal Building, 1220 SW. Third Avenue, Portland, Oregon conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Phagans' School of Beauty, Salem, Oregon, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.


[FR Doc. 84-33888 Filed 12-28-84; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on January 23, 1985 at 9:00 a.m., the Portland, Oregon Regional Office Station Committee on Educational Allowances shall at Room 4427, Federal Building, 1220 SW. Third Avenue, Portland, Oregon conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Phagans' School of Beauty, Salem, Oregon, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.


[FR Doc. 84-33903 Filed 12-28-84; 8:45 am]

BILLING CODE 8320-01-M
Sunshine Act Meetings

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(f)(3).

CONTENTS

1. Commodity Futures Trading Commission
   TIME AND DATE: 11:00 a.m., Friday, January 25, 1985.
   PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.
   STATUS: Closed.
   MATTERS TO BE CONSIDERED: Market surveillance matters.
   CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 251-6314.
   Jean A. Webb, Secretary of the Commission.
   [FR Doc. 84-33977 Filed 12-27-84; 3:35 p.m.]
   BILLING CODE 6351-01-M

2. Federal Deposit Insurance Corporation
   Notice of Agency meeting.
   Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:35 p.m. on Saturday, December 22, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:
   (A) Consider a memorandum regarding office space requirements in the Corporation's Washington, D.C. office buildings; and
   (B) (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Security Bank, Sandwich, Illinois, which was closed by the Commissioner of Banks and Trust Companies for the State of Illinois on Saturday, December 22, 1984; (2) accept the bid for the transaction submitted by First National Bank of Sandwich, Sandwich, Illinois, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(2)), as was necessary to effect 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, that the public interest did not require consideration of the matters on less than seven days' notice to the public; 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)(2), (c)(3), (c)(6)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(3), (c)(6)(A)(ii), and (c)(9)(B)).


Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 84-33928 Filed 12-27-84; 11:44 am]
BILLING CODE 6714-01-M

6. Postal Service
   Notice of a meeting.
   The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.3) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, January 7, 1985, in Washington, D.C., and at 8:30 a.m. on Tuesday, January 8, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. As indicated in the following paragraph, the January 7 meeting is closed to public observation. The January 8 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on December 11, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting schedule for January 7 (See 49 FR 49199, December...
18, 1984.) The meeting will involve a discussion of personnel matters.

Agenda

Monday Session
January 7—1:00 p.m. (Closed)
1. Personnel Matters.

Tuesday Session
January 8—8:30 a.m. (Open)
2. Remarks of the Postmaster General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. Officer Compensation.
4. Selection of Chairman and Vice Chairman.

(Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and Vice Chairman.)
5. Appointment of Committee Members by the Chairman.
   (The Bylaws also provide that the terms of the Chairman and members of the several Committees of the Board expire at the end of this meeting.)
   (Mr. Hams will present for approval by the Board the Annual Report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)
7. Capital Investments:
   a. Revovation of the New York PDC (Phase II).
   b. Stamford CT GMF/VMF
   c. Retail Vending, Phase I—Stamp Vending Units.
   (Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will present the proposal for the PDC renovation and the Stamford GMF/VMF. Mr. Hagburg, Assistant Postmaster General, Delivery Services Department, will present the proposal for the retail stamp vending units.)

David F. Hams,
Secretary.
[FR Doc. 84-33661 Filed 12–27–84; 2:52 pm]
BILLING CODE 7710-12-M
Part II

Office of Science and Technology Policy

Proposal for a Coordinated Framework for Regulation of Biotechnology; Notice
OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Proposal for a Coordinated Framework for Regulation of Biotechnology

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Notice for public comment.

SUMMARY: The purpose of this Federal Register notice is to provide a concise index of U.S. laws related to biotechnology, to clarify the policies of the major regulatory agencies that will be involved in reviewing research and products of biotechnology, to describe a scientific advisory mechanism for assessment of biotechnology issues, and to explain how the activities of the Federal agencies in biotechnology will be coordinated.

DATE: Comments must be received on or before April 1, 1985.

Public Participation: The Cabinet Council Working Group on Biotechnology through the Office of Science and Technology Policy, is seeking the advice of individuals, public interest groups, industry and academia on all aspects of this publication. The Working Group welcomes candid assessments of the process and the policy as well as questions raised regarding the scope of the proposal.

The intention of the Working Group is to republish this material in final form as soon as possible following the close of the comment period. This will assure that well understood regulatory policy and process are established in timely manner to enable a beneficial industry to proceed safely and efficiently.

Information submitted as comments to EPA on this notice may be claimed confidential by-marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided to EPA by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

ADDRESS: Comments specific to the EPA, USDA, or FDA policy statements should be addressed to:
EPA: Docket # OPTS 00049, Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-409, 401 M Street, SW., Washington, D.C. 20460

USDA: Docket # APHIS 00049, Ms. Karen Darling, Deputy Assistant Secretary, Marketing and Inspection Services, U.S. Department of Agriculture, Room 242-E, Administration Building, 12th and Independence Avenue, SW., Washington, D.C. 20250

FDA: Docket # 081-0431, Dockets Management Branch, Food and Drug Administration (HFA-305), Room 62, 5000 Fighbors Lane, Rockville, MD 20857

Any other comments should be provided to the following address: Dr. Bernadine Healy Bulkeley, Deputy Director, Office of Science and Technology Policy, Executive Office of the President, NEOB—Room 5005, Washington, D.C. 20508.

Jerry D. Jennings, Executive Director, Office of Science and Technology Policy.


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II. Regulatory Matrix
III. Statements of Proposed Policy
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   C. Statement of U.S. Department of Agriculture Policy for Regulating Biotechnology Processes and Products
IV. Scientific Advisory Mechanism
V. Glossary

Introduction

Only forty years ago, DNA was discovered to be the repository of genetic information. This discovery has been followed by an explosion in our understanding of the ability to manipulate the gene as manifest by the new commercial biotechnology which has introduced a new and profound dimension into the field of classical genetics. Today, new techniques for manipulating genetic information offer exciting advances, as remarkable as the discovery of antibiotics or the computer chip.

While some techniques of biotechnology are not new—the use of yeast in baking and brewing began around 6000 B.C.—the most recently developed techniques are far more sophisticated. Modern biotechnology promises to benefit many fields of human endeavor by offering new services and a wide variety of products superior to those currently available because they will be more effective, convenient, safer, or more economical.

Biotechnology already has successfully produced new drugs and improved existing drugs such as human insulin, interferons and vaccines. Exciting research is underway in agricultural applications to enhance plant and animal productivity to help feed the world's people. Within reach of commercial applicability are products to diagnose, prevent and treat animal diseases, to improve animal breeds and to improve specific plant characteristics. Microorganisms have also been developed in research laboratories to degrade pollutants, enhance oil recovery, convert biomass to energy, leach minerals, and concentrate metals.

With the diversity of applications, biotechnology will alleviate many problems of disease and pollution and increase the supply of food, energy, and raw materials.

The United States is now the world leader in biotechnology. This leadership is derived from a strong science base, a vigorous entrepreneurial spirit and availability of venture capital. New uses of biotechnology have created intense domestic and international competition. Several other nations have elevated the development of biotechnology to a national priority. The tremendous potential of biotechnology to contribute to the nation's economy in the near term, and to fulfill society's needs and alleviate its problems in the longer term, makes it imperative that progress in biotechnology be encouraged.

While the potential benefits of biotechnology are widely acknowledged, legitimate concerns about safety have also been raised as additional products of biotechnology move from contained research laboratories into full contact with the public and the environment through commercial testing and applications in the environment. For example, concerns have been raised about the effect of genetic manipulations on the potential virulence of altered microorganisms, or the ability of new organisms to obtain a selective advantage. Certainly both the safety and effectiveness of new processes and products must be central issues in the design of new scientific developments or technological innovations. Accordingly, it is incumbent upon the government, the business community, and the public to take responsible and timely measures to insure that the public health and the environment are protected and that societal concerns are promptly addressed.

The Administration, recognizing its responsibility to confront the special concerns that surround modern biotechnology, formed an interagency working group under the White House Cabinet Council on Natural Resources
and the Environment. The fundamental purpose of the Working Group is to ensure that the regulatory process adequately considers health and environmental safety consequences of the products and processes of the new biotechnology as they move from the research laboratory to the marketplace. The Working Group recognizes the need for a coordinated and sensible regulatory review process that will minimize the uncertainties and inefficiencies that can stifle innovation and impair the competitiveness of U.S. industry. It recognizes that not only should approaches be consistent from agency to agency and within each agency from application to application, but also that regulatory decisions should be based upon the best available science. The importance of addressing the emerging commercial aspects of biotechnology in a coordinated and timely fashion is captured in the recent report by the Congressional Office of Technology Assessment which warned: "Although the United States is currently the world leader in both basic science and commercial development of new biotechnology, continuation of the initial preeminence of American companies in the commercialization of new biotechnology is not assured." 1

The Working Group recognizes that the manner in which regulations for biotechnology are implemented in the United States will have a direct impact on the competitiveness of U.S. producers in both domestic and world markets and the future development of basic science. Thus, the Working Group has endeavored to develop a coherent and sensible regulatory process, one based on the best available scientific facts and intended to reduce uncertainties, delays, overlaps, and inconsistencies. Attention will be paid also to international harmonization. The United States is seeking to promote scientific cooperation, mutual understanding of regulatory approaches and international agreement on a range of common technical problems such as the development of consistent test guidelines, laboratory practices and principles for assessing potential risks. The U.S. also is committed to reducing barriers to trade in biotechnology. U.S. regulatory agencies will provide similar treatment to domestic and foreign products with regard to their regulations and approval procedures. Barriers to trade of biotechnology products can only be avoided if the U.S. and other


nations join together in working toward this goal. In achieving national consistency and international harmonization, regulatory decisions can be made in a socially responsible manner, protecting human health and the environment, allowing U.S. producers to remain competitive and, most importantly, assuring that everyone will reap the benefits of this exciting biological revolution.

Regulation of Biotechnology Processes and Products

In response to concerns of the scientific community in the early 1970s, the Federal Government sponsored a conference to explore the risks and benefits of recombinant DNA (rDNA) research. In 1974 the National Institutes of Health (NIH) developed the NIH Guidelines for Research Involving Recombinant DNA Molecules. It was reasoned that a cautious approach to this research was essential to assure safety while still fostering the advancement of this new technology. These guidelines have allowed research to flourish within appropriate constraints. Experience gained in rDNA laboratory research has mitigated many of the concerns about risk, thus allowing modification of the original guidelines and oversight mechanisms.

Almost a decade later as the pace of commercial application has accelerated, this new initiative was undertaken to review regulatory requirements and to articulate policy for biotechnology products. In April 1984, the Cabinet Council on Natural Resources and the Environment established an interagency working group to study and coordinate the government's regulatory policy for these products. 2 The group was asked to:

1. Review the regulatory requirements which have been applied to commercialized biotechnologies.
2. Identify existing laws and regulations that may be applicable to biotechnology.
3. Review the function of the NIH Recombinant DNA Advisory Committee and its role in biotechnology commercialization and safety regulation.

The member agencies include: Departments of Interior, Justice, State, Agriculture, Commerce, Defense, Energy, Health and Human Services, and Labor; Environmental Protection Agency; Council on Environmental Quality; Council of Economic Advisors; Office of Management and Budget; Office of Policy Development; the National Science Foundation; Office of the U.S. Trade Representatives and the Office of Science and Technology Policy. 3

4. Clarify the regulatory path that a company with a new product would follow to meet Federal health and safety requirements.
5. Determine whether current regulatory requirements and Federal review are adequate for new products.
6. Develop specific recommendations for administrative or legislative actions to provide additional regulatory review if warranted, while maintaining flexibility to accommodate new developments.
7. Review court rulings regarding the granting of patents for biotechnology.
8. Review other Federal actions such as support of basic research and training, U.S. patents and trade laws, and other policy issues which affects commercialization and U.S. competitive position vis-a-vis international firms.

The results of the interagency effort to date are reflected in the publication of this notice for public review and comment. These include: (1) Regulatory matrix: a concise index of the current regulatory requirements that might be applicable to biotechnology; (2) Policy statements: a compilation of proposed statements of policy that describe how the U.S. Department of Agriculture, the Environmental Protection Agency and the Food and Drug Administration intend to apply their existing regulatory authorities to biotechnology products; (3) A Scientific Advisory Mechanism: a coordinated structure of scientific review to promote consistent risk assessment within statutory confines; and (4) Glossary: a glossary of terms used in the policy statements.

Given the evolving nature of biotechnology, the Working Group will continue to meet to review the ongoing process. If regulatory gaps emerge and the process is not responding to public concerns, the Working Group will make recommendations for either administrative reform or additional legislative authority.

1. Regulatory Matrix

The matrix outlines laws, regulations and guidelines that may be applicable to biotechnology products at some point in research, development, marketing, shipment, use, or disposal. To aid in understanding current requirements, the matrix has been divided into seven parts which have been cross-referenced when necessary:

I. Licensure and other premarketing requirements;
II. Post-marketing requirements;
III. Export controls;
IV. Research and information gathering;
V. Patents;
VI. Air and water emissions standards; and
VII. Requirements for Federal agencies.
The matrix will be reviewed annually and updated as necessary.

2. Policy Statements

Individual “Statements of Proposed Policy” have been developed by the three regulatory agencies—FDA, USDA and EPA—that will be involved most extensively in oversight of research and industrial engaged in product development. These statements do not describe detailed regulatory requirements, but rather the general policy framework within which regulatory decisions will be made. They attempt to provide a clear understanding of how regulatory agencies will approach this emerging technology. At present the regulatory authorities that are in place appear to accommodate these new products. The responsibilities of EPA, FDA and USDA are determined by statute (see the Matrix of Federal Authorities elsewhere in this notice), and are generally based upon key characteristics or uses of the end products. When new types of products are developed, such as will be the case with biotechnology, each agency must develop and apply certain rules for determining whether its statutes apply with possible modification of existing rules. For example, FDA must determine whether products containing genetically engineered microorganisms constitute food additives, drugs; or other products subject to FDA approval, EPA whether they are pesticides or industrial products, and USDA whether they are plant pests, animal biologicals, or other agricultural products subject to its authority. These decisions must be consistent with the statutory requirements of the laws each agency administers.

Regardless of the criteria used to determine whether a product is within the responsibility of a given agency, all three agencies will approach the review of biotechnology products and processes in similar ways. All conduct their assessments on a case-by-case basis, employing internal staff, consultants, and expert advisory committees (described below). Each considers the ultimate safety of the product as a primary concern; other issues, such as efficacy, may also be considered. Also, each agency develops product review criteria and procedures which are consistent with its historical experience and scientific data bases developed from reviewing other products with similar uses. EPA, FDA and USDA are committed to working together and with other members of the Cabinet Council Working Group to coordinate and improve the development of appropriate and useful scientific evaluation methods and administrative procedures for genetically engineered organisms and their products. All are striving for a balanced approach supported by sound science and incorporating the latest scientific and technological information. The statements of proposed policy which each has prepared and which are issued in this notice are viewed as among the first steps toward that goal.

3. Scientific Advisory Mechanism

The importance of the highest caliber scientific advice to the decision-making process for oversight of biotechnology is undisputed. NIH’s experience with its RAC is an example of the value of using distinguished scientists to participate in the assessment of risk of new projects or proposals involving genetic manipulation. The experience of the RAC over the past ten years serves as a valuable model to the Working Group in structuring the proposed scientific review coordinating mechanism.

With the evolution of biotechnology and its increasing commercialization, the complexity and scope of scientific review broadens and the existing mechanisms for scientific review must be expanded. The Working Group proposes an adjunctive scientific advisory mechanism that will accommodate the needs of individual agencies and provide a central focus for scientific advice on biotechnology issues. It affords maximal opportunity to achieve scientific consensus and retains the flexibility in scientific policy guidance that has characterized the existing NIH RAC. In addition, it can be implemented in a short time.

4. Glossary

The glossary included at the end of this notice is intended to provide definitions for terms appearing in the policy statements to assist the reader in reviewing the notice. The definitions are not to be considered legally binding on any Federal agency and may be revised as needed.

Interagency Coordination of Risk Management and Regulation in Biotechnology

In addition to coordination of scientific review, the Working Group recognizes the need for coordination of the regulatory activities of the federal government. An interagency committee is needed to foster timely and coordinated decision making via interagency communication on matters of regulation; discuss matters of jurisdiction among agencies; serve as a mechanism by which agencies can raise public and concern; and consider generic approaches for translating risk industry assessment information into policy decisions.

The Cabinet Council Working Group also recognizes the need for this continuing coordinated mechanism also to address the broader issues within the regulatory process itself. Although at the present time existing statutes seem adequate to deal with the emerging processes and products of modern biotechnology, there are always potential problems and deficiencies in the regulatory apparatus in a fast moving field. We believe the interagency coordinating committee should monitor the changing scene of biotechnology and serve as a means of identifying potential gaps in regulation in a timely fashion, making appropriate recommendations for either administrative or legislative action.

For the time being the Cabinet Council Working Group can serve these needs. When its activities are concluded, an interagency coordinating committee for Biotechnology would, if still needed, be established to continue this effort.
<table>
<thead>
<tr>
<th>AUTHORITY OR GUIDELINE</th>
<th>DESCRIPTION</th>
<th>AFFECTED PRODUCTS OR PROCESSES</th>
<th>AFFECTED AGENCIES</th>
<th>CROSS-REFERENCES</th>
<th>NOTES</th>
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<tr>
<td>I LICENSING AND OTHER PREMARKETING REQUIREMENTS</td>
<td>Premarketing approval required for: drugs — Sec 505, medical devices — Sec 515, food additives — Sec 409, animal feed additives, and color additives — Sec 706, animal drugs — Sec 512</td>
<td>All human and animal drugs and human devices, food additives, animal feed additives, and color additives</td>
<td>HHS-FDA</td>
<td>Certain EPA statutes specifically exclude FD&amp;C Act products. EPA sets tolerance levels for pesticide residues in the food chain. FDA provides human tolerance levels for animal drugs in food chain and poultry. USDA-USDA FSIS animal and human biologics are regulated under the Virus-Scum-Toxin Act (VST Act). A USDA statute, and the Public Health Service Act, respectively. FDA decisions are subject to National Environmental Policy Act (NEPA).</td>
<td>From the beginning of clinical research to premarketing approval takes for: human drugs: 7-10 years, animal drugs: 3-5 years, devices: 2-5 years, direct food additives: 5-7 years, indirect food additives: 3-5 years, color additives: 5-9 years. Important: FDA regulates biotechnology on a product-by-product basis. FDA will not be restructuring the process to regulate the products of biotechnology or the manufacturers of these products.</td>
</tr>
<tr>
<td>Public Health Service (PHS) Act Section 351(e) (42 USC 262)</td>
<td>Licensing for marketing required for human biologics</td>
<td>Human biologies</td>
<td>HHS-FDA</td>
<td>USDA-USDA FSIS licensure. Animal biologics produced by manufacturers. FDA decisions are subject to NEPA.</td>
<td>The research use of investigational new drugs is regulated under the FD&amp;C Act. From the beginning of clinical research to licensure takes approximately 2-8 years depending on the type of biologic, but 6-8 is more common.</td>
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<td>Regulations: 21 CFR 600-609</td>
<td>FDA technical guidance for new product approval</td>
<td>Human drugs and biologics</td>
<td>HHS-FDA</td>
<td>FDA review the adequacy of testing of all products on a case-by-case basis.</td>
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<td>AUTHORITY OR GUIDELINE</td>
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<td>&quot;Points to consider in the production and testing of new drugs and biologicals produced by DNA technology&quot;</td>
<td>FDA technical guidance for new product approval</td>
<td>Human drugs and biologics</td>
<td>HHS-EPA</td>
<td></td>
<td>New Investigational New Drug (IND) and biological licenses and/or new drug approvals are required currently with DNA technology even if the active substance is identical in molecular structure to a previously approved product.</td>
</tr>
<tr>
<td>R&amp;D Act Section 353 (42 USC 263a) Regulations: 42 CFR 74</td>
<td>License required for clinical laboratories engaged in interstate commerce</td>
<td>Laboratory services</td>
<td>HHS-CDC</td>
<td>HHS-Health Care Financing Admin</td>
<td>To meet licensure requirements, laboratories must meet proficiency testing, quality control, and personnel standards.</td>
</tr>
<tr>
<td>Virus-Reserum-Toxin Act (21 USC 151-158) Regulations: 9 CFR 101-117 and 122-123</td>
<td>License required for any virus, serum, toxin, or analogous product intended for use in treatment of domestic animals which are shipped interstate or imported. Regulations contain standards of efficacy, purity, safety and potency. They also contain labeling provisions.</td>
<td>9 CFR 101 2(w) defines &quot;biological products&quot; to mean &quot;all viruses, sera, toxins, and analogous products of natural or synthetic origin, such as diagnostic, anti-toxins, vaccines, live microorganisms, killed microorganisms and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases of animals.&quot;</td>
<td>USDA-APHIS</td>
<td>USDA decisions are subject to NEPA. The definition of drugs in the FDCA Act includes biological products. The FDCA Act (21 USC 351) and its regulations exempt biological products regulated under the VST Act.</td>
<td></td>
</tr>
<tr>
<td>USDA's Licensing Policy for Biologicals Produced by DNA</td>
<td>USDA technical guideline reviewing production and test considerations for evaluating DNA product license applications</td>
<td>Veterinary biologics and diagnostics</td>
<td>USDA-APHIS</td>
<td>USDA's licensing policy for conventional or DNA derived veterinary biologics is on a product-by-product basis, and requires that all license applicants for DNA products comply with the NIH &quot;Guidelines for Research Involving Recombinant DNA Molecules.&quot;</td>
<td></td>
</tr>
<tr>
<td>Veterinary Services Memorandum Number 300-66</td>
<td>USDA policy and procedures for new product license applicants</td>
<td>Veterinary biologics and diagnostics</td>
<td>USDA-APHIS</td>
<td>Each veterinary biologic product is reviewed as a single entity. USDA evaluates each license application for conventional or DNA biologics to ensure purity, potency, safety, and efficacy. Technical guidelines used for licensing products developed through DNA or hybridoma technology.</td>
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<td>Memorandum of Under-</td>
<td>Agreement between APHIS</td>
<td>Veterinary</td>
<td>USDA-APHIS</td>
<td></td>
<td>Provides broad range of authority over &quot;chemical substances.&quot;</td>
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<td>standing between USDA</td>
<td>and FDA regarding responsibility</td>
<td>biologics or</td>
<td></td>
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<td>and FDA for Defining</td>
<td>for regulating animal biologic</td>
<td>drugs</td>
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<td>Jurisdiction of</td>
<td>products as biologics under</td>
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<td>Animal Drugs. (See</td>
<td>the VSF Act or as drugs under</td>
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<tr>
<td>47 FR 26458, June 18,</td>
<td>the FDCA Act</td>
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<td>1982)</td>
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<tr>
<td>Toxic Substances</td>
<td>TSCA applies to &quot;chemical substances&quot; defined as &quot;any</td>
<td>Industrial chemicals produced by genetically engineered</td>
<td>EPA, agencies that manufacture &quot;chemical substances&quot; for commercial purposes</td>
<td>Drugs, biologics, foods, food additives, cosmetics, pesticides and tobacco and tobacco products are excluded from TSCA review.</td>
<td></td>
</tr>
<tr>
<td>Control Act (TSCA)</td>
<td>organic or inorganic substance of a particular molecular</td>
<td>organisms or by-products (e.g., enzymes); organisms used in general industrial, commercial, and consumer applications, such as water pollution control, mineral leaching, disinfecting, etc.; organisms used to make TSCA or Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) chemicals</td>
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<td>(5 USC 2601-2929)</td>
<td>identity including, any combination of such substances occurring in nature.&quot;</td>
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<tr>
<td>Section 5(a)(1)(B)</td>
<td>Producing submission of pre-market review (PMR) for &quot;new chemical substance&quot;</td>
<td>New products (including organisms) used for purposes listed above</td>
<td>EPA</td>
<td></td>
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<tr>
<td>Section 5(a)(1)(B)</td>
<td>Bacteriological research and development activities from FDA requirements</td>
<td>Organisms and other substances used in the lab; products sold solely for R&amp;D use (e.g., restriction enzymes)</td>
<td>EPA</td>
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<tr>
<td>Section 5(a)(1)(B)</td>
<td>Authorizes EPA to require by rule reporting before &quot;chemical substance&quot; are used for &quot;significant new uses&quot;</td>
<td>TSCA chemicals proposed for new use</td>
<td>EPA</td>
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</tbody>
</table>

Mandatory requirements: 90-day review, establishable for "good cause" to 180 days. EPA must make a finding of potential risk or exposure to regulate. R&D in small quantities (including small quantities of biotechnology R&D) are exempt from PMR. "Small quantities" as defined by rule would exempt field testing.

Discretionary "significant new uses" must be defined by rule. No regulations currently in place that affect biotechnology.
<table>
<thead>
<tr>
<th>AUTHORITY OR GUIDELINE</th>
<th>DESCRIPTION</th>
<th>AFFECTED PRODUCTS OR PROCESSES</th>
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<th>CROSS-REFERENCES</th>
<th>NOTES</th>
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</thead>
<tbody>
<tr>
<td>Regulations: 40 CFR 720</td>
<td>PMN requirements</td>
<td>TSCA Chemicals</td>
<td>EPA, agencies that manufacture &quot;new chemical substances&quot; for commercial purposes</td>
<td></td>
<td>Interprets mandatory statutory requirements</td>
</tr>
<tr>
<td>Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC 136-136y)</td>
<td>Requires registration of pesticides before distribution or use (pesticide broadly defined as &quot;any substance or mixture, intended for preventing, destroying, repelling or mitigating any pest, and intended for use as a plant regulator, defoliant, or desiccant&quot;)</td>
<td>Biological pesticides (e.g., microorganisms or their chemical products) Includes INAs</td>
<td>EPA, USDA-FSIS, HHS-TDA</td>
<td>EPA sets tolerance levels for pesticide residues in the food chain which EPA and USDA-FSIS enforce</td>
<td>Pesticides defined to include living organisms. EPA review period could vary from one to several years. Fourteen microbial pesticides (non-engineered) have been approved</td>
</tr>
<tr>
<td>Section 3(c)(2)(A)</td>
<td>Authorizes EPA to publish &quot;guidelines&quot; specifying kinds of information needed for registration</td>
<td></td>
<td>EPA</td>
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<tr>
<td>Section 5</td>
<td>Authorizes EPA to issue experimental use permits for limited uses before registration</td>
<td></td>
<td>EPA</td>
<td></td>
<td>120 day review period; can be extended</td>
</tr>
<tr>
<td>Section 25(b)</td>
<td>Authorizes EPA to exempt a pesticide from registration</td>
<td></td>
<td>EPA, USDA-APHIS</td>
<td>USDA has responsibility for higher plants and animals that are considered pesticides (40 CFR 162 5(c)(4))</td>
<td>Higher plants and animals and certain pheromone attractants have been exempted</td>
</tr>
<tr>
<td>Regulations: 40 CFR 158</td>
<td>Data requirements for pesticide registration including genetically modified microbial pesticides</td>
<td>Microbial pesticides</td>
<td>EPA</td>
<td>Section 3 of FIFRA</td>
<td>Includes data requirements for microbial pesticides. Testing requirements are tiered, with more complicated tests required where certain criteria are met. Additional requirements for genetically modified and other microbial pesticides determined on a case-by-case basis</td>
</tr>
<tr>
<td>Authority or Guideline</td>
<td>Description</td>
<td>Affected Products or Processes</td>
<td>Affected Agencies</td>
<td>Cross-References</td>
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<tr>
<td>40 CFR 162</td>
<td>Pesticide registration regulations</td>
<td>Microbial pesticides</td>
<td>EPA, USDA-NRGI, DOI</td>
<td>Section 3 of FIFRA; Biological control agents regulated by USDA, DOI, or other Federal agencies under express statutory authority not included</td>
<td>Applies to viruses, bacteria, protozoa, fungi, etc., used as pesticides. Does not apply to higher plants and animals.</td>
</tr>
<tr>
<td>40 CFR 172</td>
<td>Experimental use permit regulations</td>
<td>Field-tested microbial pesticides</td>
<td>EPA</td>
<td>Section 5 of FIFRA</td>
<td>120 day review period which can be extended; for land uses, generally only need permit if test covers more than 10 acres, but EPA has authority to require permits for less than 10 acres under certain circumstances.</td>
</tr>
<tr>
<td>&quot;Microbial Pesticides: Interim Policy on Small Scale Field Testing&quot; (49 FR 40659 (1984))</td>
<td>EPA policy requiring notification prior to small scale field tests with certain microbial pesticides</td>
<td>Microbial pesticides containing nonindigenous or genetically altered microorganisms</td>
<td>EPA</td>
<td>Section 5 of FIFRA and 40 CFR 172</td>
<td>Applies to tests conducted on 1 or less acres of land or 1 or less acre of water (i.e., small scale field testing).</td>
</tr>
<tr>
<td>Reorganization Plan no. 3 of 1970, Section 2(d) (5 USDA App.)</td>
<td>Authorizes EPA to establish tolerances for pesticide residues in food chain</td>
<td>Pesticide products used so as to result in residues in food chain</td>
<td>EPA, HHS-EDA, USDA-ESIS</td>
<td>EDCR Sec. 406, 409, 410</td>
<td>EPA pesticide standards which are enforced by FDA and USDA.</td>
</tr>
<tr>
<td>Regulations: 40 CFR 162 7(d)(3)(v) and 162.18-4(d)(4)</td>
<td>Requires tolerances before registration</td>
<td>Pesticides to be registered for food or animal feed use</td>
<td>EPA, HHS-EDA, USDA-ESIS</td>
<td></td>
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<tr>
<td>Guidelines: &quot;Guidelines for Research Involving Recombinant DNA Molecules&quot; (49 FR 40266 (1984))</td>
<td>Specifies practices for constructing and handling DNA molecules and organisms and viruses containing DNA molecules. Compliance is required for institutions that receive support for DNA research from NIH.</td>
<td>All DNA research conducted by institutions receiving NIH support as well as NIH itself.</td>
<td>All involved in DNA research, primarily HHS and USDA, administered by HHS-NIH with the advice of the DNA Advisory Committee (NAC)</td>
<td>Biotechnology EGD exempt from NIH DNA research funding.</td>
<td>Voluntary compliance for institutions that receive NIH DNA research funding.</td>
</tr>
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<tr>
<td>II POST MARKETING REQUIREMENTS</td>
<td>A Occupational Safety</td>
<td>&quot;Biosafety in Microbiological and Biomedical Laboratories&quot;</td>
<td>All clinical, public health, and private diagnostic labs and research labs using pathogenic microorganisms</td>
<td>All involved in diagnostic public health and research, HHS, USDA, EPA</td>
<td>Voluntary compliance for all Federal, State, and private labs</td>
</tr>
<tr>
<td></td>
<td>Occupational Safety and Health Act (29 USO 651 et seq)</td>
<td>Regulation of the workplace to assure that no employee will suffer diminish health as a result of conditions in the workplace; authority to publish standards with which employers must comply; authority to fund research and development; authority to &quot;describe exposure levels&quot; (risk assessment). No license or premarket approval required.</td>
<td>Exposure to inorganic and organic chemicals and microorganisms</td>
<td>DOT-OSHA, HHS-CDC, NIOSH</td>
<td>The statute uses several adjectives that are subject to interpretation such as serious physical harm and material impairment of health. The Secretary of Labor may grant a waiver to standards under certain specific and narrowly defined conditions. Standards may be effective immediately in cases of imminent hazard. Important: States have the right to enforce their own standards where no Federal standards exist and they have the right to administer Federal standards under plans approved by the Secretary of Labor.</td>
</tr>
<tr>
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<td>Regulations:</td>
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<tr>
<td>29 CFR 1900-1910</td>
<td>Sets regulatory standards for specific workplace hazards</td>
<td>Primarily toxic chemicals</td>
<td>DOH-OSHA, NIOSH</td>
<td>NIOSH recommends standards to OSHA</td>
<td>There is no general industry standard requiring compliance in the biotech area. A standard may be developed for each engineered area.</td>
</tr>
<tr>
<td>30 CFR 11 Workplace</td>
<td>Sets a regulatory standard for respirators</td>
<td>Respirable toxic gases</td>
<td>NIOSH-CDC, DOE-Mine Safety and Health Admin.</td>
<td>OSHA and NIOSH require adherence to respirator standards</td>
<td>NIOSH has a regulatory role here.</td>
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<tr>
<td>Respirator Standards</td>
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<tr>
<td>29 CFR 1910 20 Access</td>
<td>Provides access to plant information on toxic substances and harmful physical agents and to medical monitoring data related to exposures.</td>
<td>Toxic substances and physical and biological agents</td>
<td>DOH-OSHA, NIOSH</td>
<td></td>
<td>Could include biological agents.</td>
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<td>to Employee Exposure</td>
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<td>and Medical Records</td>
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<tr>
<td>29 CFR 1910 1200</td>
<td>Requires manufacturers and importers to evaluate hazards of their products and communicate this information to employees through labels, material safety data sheets and training.</td>
<td>Toxic substances</td>
<td>DOH-OSHA</td>
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<td>Hazard Communication</td>
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<tr>
<td>TSCA Section 6</td>
<td>Authorities EPA to regulate the manufacture, processing, distribution in commerce, use, and disposal of &quot;chemical substances&quot;</td>
<td>TSCA &quot;chemical substances&quot;</td>
<td>EPA, CRCC, OSHA, DOT</td>
<td></td>
<td>Discretionary authority can be exercised if EPA finds a substance &quot;will present an unreasonable risk. Can be used to impose controls through all phases of manufacture, processing, use and disposal. Unlike other authority (Sec 5(a)(1)(A)), Section 6 can be applied to new substances. No regulation affecting biotechnology in effect.</td>
</tr>
<tr>
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<tr>
<td>B Drug Manufacturing Practices</td>
<td>FDA establishes &quot;current good manufacturing practices&quot; (CGMPs) for drug products through regulation that are mandatory for manufacturers</td>
<td>Drugs, human biologies, and mediates/feeds</td>
<td>HHS-FDA</td>
<td></td>
<td>Certain aspects are also applicable to premarketing manufacture</td>
</tr>
<tr>
<td>C Hazardous Waste</td>
<td>Requires reporting of releases of &quot;reportable quantities&quot; of hazardous substances</td>
<td>Substances identified as hazardous under Sections 101 or 102</td>
<td>EPA-Natl. Response Center</td>
<td></td>
<td>&quot;Hazardous substance&quot; refers to (1) certain substances regulated under the Clean Water Act, Clean Air Act, TSCA, and Resource Conservation and Recovery Act, and (2) any other substances that may present substantial danger to public health, welfare, or the environment and are listed by EPA under Section 102 of Superfund Act. Some genetically engineered organisms or byproducts could meet the latter test; none now listed</td>
</tr>
<tr>
<td>Section 104</td>
<td>Provides health assessment and specific public health activities at superfund sites</td>
<td>Substances identified as hazardous under Sections 101 or 102</td>
<td>HHS-Agency for Toxic Substances &amp; Disease Registry (ATSDR)</td>
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<tr>
<td>Section 105</td>
<td>Requires EPA to develop National Contingency Plan (NCP) for cleanup of hazardous substances; must specify methods for cleanup (e.g., use of biological materials).</td>
<td>Products used to degrade hazardous substances</td>
<td>EPA, other emergency response agencies (e.g., HHS-CCR, EPA, DOT)</td>
<td></td>
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</tr>
<tr>
<td>Regulation: 40 CFR 300</td>
<td>National Contingency Plan</td>
<td>Products used to degrade hazardous substances</td>
<td>EPA, other emergency agencies</td>
<td></td>
<td>Regulation identifies criteria for responding to releases and lists use of microorganisms for waste treatment.</td>
</tr>
<tr>
<td>AUTHORITY OR GUIDELINE</td>
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<tr>
<td>Resource Conservation and Recovery Act (RCRA) (42 USC 6901-6987) Section 3001</td>
<td>Authorizes EPA to list and identify hazardous waste with assistance from NIEER and the National Toxicology Program (NTP)</td>
<td>Waste identified as hazardous</td>
<td>EPA, HHS-NIH, NTP</td>
<td></td>
<td>Discretionary authority to list waste as hazardous; no living organisms now listed, however, a biotechnology waste could be listed if concern warrants. If mixed with listed hazardous waste or if they exhibit hazardous waste characteristics, biological wastes could be regulated as hazardous waste.</td>
</tr>
<tr>
<td>Sections 3002-3004</td>
<td>Standards applicable to generators, transporters, and owners or operators of facilities that treat, store, and dispose of hazardous waste.</td>
<td>Solid waste identified as hazardous waste</td>
<td>EPA, DOT</td>
<td>DOT's authority under Hazardous Materials Transportation Act overlaps EPA's RCRA authority, but DOT and EPA have memorandum of agreement to divide responsibilities. (49 FR 51645 (1984))</td>
<td></td>
</tr>
<tr>
<td>Section 3005</td>
<td>Requires permits for treatment, storage, disposal of hazardous waste.</td>
<td>Waste identified as hazardous.</td>
<td>EPA, DOT</td>
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<tr>
<td>Sections 4005(a) and 1009</td>
<td>Prohibits &quot;open dumping&quot; of solid wastes</td>
<td>Solid waste</td>
<td>EPA</td>
<td></td>
<td>Biological products or byproducts would be subject to the prohibition when disposed.</td>
</tr>
<tr>
<td>Regulations: 40 CFR 260</td>
<td>Hazardous waste management system — general requirements</td>
<td>EPA</td>
<td></td>
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<tr>
<td>40 CFR 261</td>
<td>Identification and listing of hazardous waste</td>
<td>EPA</td>
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<tr>
<td>40 CFR 260-267</td>
<td>Standards for generators, transporters, and owners or operators of facilities that treat, store, and dispose of hazardous waste.</td>
<td>EPA, DOT</td>
<td>DOT regulates transportation of hazardous &quot;materials.&quot;</td>
<td>Would affect industries using biotechnology only to the extent they generated waste as identified. No living organisms listed.</td>
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<tr>
<td>AUTHORITY OR GUIDELINE</td>
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<tr>
<td>40 CFR 270</td>
<td>Hazardous waste permit program</td>
<td>Microbial products used in pollution control; waste and byproducts from manufacture, use, etc</td>
<td>EPA</td>
<td>Corps of Engineers authorized to issue permits for dredged material</td>
<td></td>
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<tr>
<td>Marine Protection, Research, and Sanctuaries Act (Ocean Dumping) (33 USC 1401-1445)</td>
<td>Prohibits ocean dumping without a permit, authorizes EPA to issue permits for dumping all materials except dredged materials and materials specifically prohibited by statute</td>
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<tr>
<td>Section 102, 103</td>
<td>Criteria for approving permits; prohibits dumping of wastes containing living organisms that would endanger health or the environment; exempts dredged material from that prohibition</td>
<td></td>
<td>EPA, Corps of Engineers</td>
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<td>Regulations: 40 CFR 227-228</td>
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<tr>
<td>D Other Containment and Transportation Requirements</td>
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<tr>
<td>Federal Meat Inspection Act (21 USC 601 et seq)</td>
<td>Regulates, through mandatory inspection, the slaughtering, preparation, labeling, marking, distribution of meat and meat food products to prevent &quot;adulterated&quot; or &quot;misbranded&quot; meat and meat food products from entering commerce</td>
<td>Meat and meat food products (specifically cattle, sheep, swine, goat, horse, mule, or other equine) See definition in 9 CFR 301.2 (tt) and (vv)</td>
<td>USDA-FSIS</td>
<td>FDA sets residues tolerance levels for animal drugs in food-chain animals. FDA's regulatory authority is found in 21 CFR 556</td>
<td>Both the Federal Meat Inspection Act and the Poultry and Poultry Products Inspection Act determine whether regulated articles contain any &quot;biological residues&quot; (see definitions in 9 CFR 301.2 (22) and 381.1 (7), and contain specific recordkeeping, buying, selling, and transportation requirements affecting foreign, interstate, and intrastate commerce</td>
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<tr>
<td>Regulations: 9 CFR 301 et seq</td>
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<td>Poultry and Poultry Products Inspection Act (21 USC 451 et seq)</td>
<td>Regulates, through mandatory inspection, the slaughtering, preparation, distribution, disposition, marking, and labeling of poultry and poultry products to prevent &quot;adulterated&quot; or &quot;misbranded&quot; poultry and poultry products from entering commerce</td>
<td>Poultry (specifically, any domesticated bird—chicken, turkey, ducks, geese, or guinea, whether live or dead) and poultry products See definition in 9 CFR 381.1 (40) and (41).</td>
<td>USDA-FSIS</td>
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<td>Regulations: 9 CFR 381</td>
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<tr>
<td>Hazardous Materials Transportation Act (49 USC 1801 et seq) Regulations: 49 CFR 107, 171-177</td>
<td>Regulation of transportation of hazardous materials Shippers must register with DOT. Authorizes halt of shipping immediately for &quot;imminent hazard.&quot;</td>
<td>Etiologic agents</td>
<td>DOT-Oc of Hazardous Materials Regulation</td>
<td>DOT consults with the ICC which is responsible for enforcement where it has authority. DOT has an agreement with EPA (RCRA) on duplicative authorities</td>
<td>May regulate packing, labeling, and routing as well as the manufacture of packaging. Secretary may exempt shippers if they achieve a level of safety higher than the level of safety required or if no standard exists and public safety is maintained. The requirements of this regulation are in addition to and not in lieu of any other requirements of DOT, USDA, or EPA for importation or interstate transport.</td>
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<tr>
<td>PHS Act Section 351 (42 USC 264) Regulations: 42 CFR 71-72</td>
<td>Authorizes regulation of introduction and control of communicable diseases, interstate transportation of etiologic agents and importation of etiologic agents and vectors.</td>
<td>Etiologic agents</td>
<td>HHS-CDC, FDA, NIH</td>
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<td>Section 103, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 USC 147a, 149, 148a-6) Regulations: 7 CFR 200-399</td>
<td>General authority to &quot;carry out operations or measures to detect, eradicate, suppress, control, or to prevent or retard the spread of plant pests&quot; Provides for inspection of plants and plant products offered for export.</td>
<td>&quot;Plant pests&quot; are defined as: &quot;any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertibrate animal, bacteria, fungi, other parasitic plant or reproductive parts thereof, viruses, or any organism similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any knowledge, manufactured or other products of plants.&quot;</td>
<td>USDA-APHIS</td>
<td>FDA also has authority over organisms that could act as plant pests. Authority extends to cooperative action with States or political subdivisions, farmers associations and similar associations, individuals and governments of Western Hemisphere Countries.</td>
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<td>Federal Plant Pest Act, as amended (7 USC 150a-a-jj) and Plant Quarantine Act, as amended (7 USC 151-164a, 166-167) Regulations: 7 CFR 300-399</td>
<td>General authority to regulate the importation into and the dissemination within the U.S. of plant pests, nursery stock, and other plants and plant products, and any product or article which may contain a plant pest at time of movement</td>
<td>&quot;plant pests&quot; are defined to be consistent with the definition of &quot;plant pests&quot; in Sec 102 of the Organic Act</td>
<td>USDA-APHIS</td>
<td>Authority to bring civil and criminal actions for violations of the Act or regulations promulgated thereunder. USDA may stop, and without a warrant, inspect, search, seize, examine, destroy or otherwise dispose of specified articles found to be moving or to have been moved in interstate commerce or to have been brought into the U.S. in violation of the Act or of a quarantine or order in extraordinary emergency situations, USDA may stop interstate activity as well.</td>
<td></td>
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<tr>
<td>&quot;Animal Quarantine Laws&quot; (21 USC 102-105; 21 USC 114; 21 USC 114a; 21 USC 115-115a; 21 USC 134-134d; 21 USC 135-135b) Regulations: 9 CFR 1-199</td>
<td>In general, the animal quarantine laws regulate the importation, exportation, and interstate movement of certain animals to prevent the introduction or spread of communicable diseases of animals or of the contagion of any contagious, infectious, or communicable disease of animals or end live poultry</td>
<td>21 USC 101-105 regulates cattle, sheep and other ruminants and swine imported into or intended for export from the U.S. 21 USC 111 regulates that which could introduce or cause the dissemination in the U.S. of the contagion of any contagious, infectious, or communicable disease of animals and/or live poultry.</td>
<td>USDA-APHIS</td>
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<td>Federal Noxious Weed Act of 1974 (7 USC 2801-2913) Regulations: 7 CFR 360</td>
<td>Authority to issue permits to regulate the movement of noxious weeds into or through the U.S.</td>
<td>&quot;Noxious weed&quot; is defined as &quot;any living stage (including but not limited to seeds and reproductive parts) of any parasitic or other plant of a kind or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the U.S., and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture including irrigation or navigation or the fish and wildlife resources of the United States or the public health.&quot;</td>
<td>USDA-APHIS</td>
<td>No action may be taken to regulate interstate movement unless a State also takes a cooperative action to eradicate the noxious weed in its State.</td>
<td>Authority to seize, quarantine, treat, destroy or otherwise dispose of any product or article of any character whatsoever, or means of conveyance, which is moving into or through the U.S. or interstate and which is believed to be infected by any noxious weed, or contains any noxious weed, or which was infested or contained any noxious weed at the time of movement.</td>
</tr>
<tr>
<td>TSCA Section 13 Regulations: 40 CFR 707 19 CFR 12, 127</td>
<td>Substance imported into the US must be in compliance with TSCA.</td>
<td>TSCA &quot;chemical substances&quot;</td>
<td>EPA, USDA-APHIS, Treasury Dept.</td>
<td>Federal Plant Pest Act, Federal Noxious Weed Act, &quot;Exotic Organism&quot; Executive Order 11987 also regulate imports</td>
<td>Mandatory requirement. Rules were issued by Treasury Department and EPA.</td>
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<tr>
<td>III EXPORT CONTROLS</td>
<td>Technical Data</td>
<td>Technical data related to all biotechnologies</td>
<td>Dept of Commerce-Int’l Trade Admin (DOC-ITA)</td>
<td></td>
<td>Stats provides discretionary authority to restrict technical data for three reasons: a) Foreign Policy b) National Security c) Short Supply Although authority to administer the EAR terminated, it was extended indefinitely by Executive Order 12370 of March 30, 1984</td>
</tr>
<tr>
<td>Regulatory Act 1962</td>
<td>Commodities</td>
<td>Bacteria, fungi, protozoa, virus, human and animal peptides and proteins, DNA, nucleotides and side antibiotics and diagnostics, amino acids, vitamins, enzymes, pesticides, herbicides and seeds</td>
<td>DOC-ITA</td>
<td>Restriction generally apply to Soviet Bloc countries and those countries with which we do not have diplomatic relations</td>
<td></td>
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<tr>
<td>IV RESEARCH AND INFORMATION GATHERING</td>
<td>Research</td>
<td>Biomedical research authority, both intramural and extramural research</td>
<td>HHS-NIH, USDA-ARS, CDC, FDA</td>
<td>HHS has many other research authorities for specific diseases, but Section 301 is sufficient to do biomedical research related to human health</td>
<td></td>
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<tr>
<td>Organics Act of 1962</td>
<td>Agricultural research authority, both intramural and extramural</td>
<td>Plants and animals</td>
<td>USDA-ARS</td>
<td>USDA also has many authorities for research, just as NIH, including: Forensic Animals, Dairy Industry, Aboretum, Forest and RangeLand, Cotton and Nutrition</td>
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<td>Organic Act of 1944 Section 101(d) (7 USC 430)</td>
<td>Authority to purchase and test samples of all tuberculin, sera, antitoxins, or analogous products, of foreign or domestic manufacture, which are sold in the U.S. for the detection, prevention, treatment or cure of diseases of domestic animals</td>
<td></td>
<td>USDA-ARS</td>
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<td>TSCA, FIFRA, RCRA, Clean Water Act</td>
<td>Environmental research authority, both intramural and extramural</td>
<td>TSCA &quot;chemical substances,&quot; pesticides, hazardous wastes, air and water pollutants</td>
<td>EPA</td>
<td></td>
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<td>B Information Gathering</td>
<td>Requires specific recordkeeping on labeling, importation and interstate movement of seeds.</td>
<td>Agricultural and vegetable seeds</td>
<td>USDA-NPHIS</td>
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<td>Federal Seed Act (7 USC 1551-1611) Regulations: 7 CFR 201 et seq</td>
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<td>The term &quot;treated&quot; means given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom</td>
</tr>
<tr>
<td>TSCA Section 4</td>
<td>Authorizes EPA to require manufacturers by rule to test specific &quot;chemical substances&quot;</td>
<td>TSCA &quot;chemical substances&quot;</td>
<td>EPA</td>
<td></td>
<td>Discretionary authority could be used to require testing of specified products developed through genetic engineering (both organisms and chemicals produced by organisms); could be used to support activities of other agencies (e.g., USDA, CNRC) to regulations affecting biotechnology now in effect</td>
</tr>
<tr>
<td>TSCA Section 8(d)</td>
<td>Authorizes EPA to require manufacturers and processors to submit information on a product's identity, exposure, available health and safety data, etc.</td>
<td></td>
<td>EPA</td>
<td></td>
<td>Discretionary authority involved by rule; can be used to support other agencies, small businesses generally except from reporting on biotechnology rule now in effect.</td>
</tr>
<tr>
<td>TSCA Section 8(d)</td>
<td>Authorizes EPA to require submission of health and safety studies on products subject to TSCA.</td>
<td></td>
<td>EPA</td>
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<td>Discretionary authority involved by rule; no biotechnology rules now in effect.</td>
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<td>TSCA Section 8(a)</td>
<td>Requires submission of information on substantial risk from &quot;chemical substances&quot;</td>
<td>TSCA chemicals</td>
<td>EPA</td>
<td>Mandatory requirement if substance subject to TSCA and information shows substantial risk.</td>
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<tr>
<td>Guideline: 43 FR 11110 (1978)</td>
<td>Policy for submitting information under Sec 8(a)</td>
<td>TSCA chemicals</td>
<td>EPA</td>
<td>Mandatory requirement if substance subject to TSCA</td>
<td></td>
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<tr>
<td>PIFPA Section 6(a)(2)</td>
<td>Continuing obligation for registrants to supply data</td>
<td>All registered products</td>
<td>EPA</td>
<td>After registration, registrants must report additional information on unreasonable adverse effects of pesticide. The &quot;interpretation&quot; is undergoing revision currently</td>
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<td>Guideline: Interpretation of Requirements on Registrants by Section 6(a)(2), August 23, 1978 (43 FR 37611 and 44 FR 40716)</td>
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<td>PIFPA Section 3(c)(2)(S)</td>
<td>Authorizes EPA to request additional data in support of registration</td>
<td>All registered products</td>
<td>EPA</td>
<td>After registration, EPA may require additional data from registrants in order to maintain registrations</td>
<td></td>
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<tr>
<td>V PATENTS</td>
<td>Patent process</td>
<td>All products and devices</td>
<td>DOC-Patent and Trademark Office</td>
<td>Patent for new drugs issued well before FDA premarket approval</td>
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<td>Patent and Trademark Law (35 USC 1 et seq.)</td>
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<td>Important: Government research institutions can offer Institutional Patent Agreements with universities for 5 to 8 years after market approval under 35 USC 306-517</td>
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<td>Regulations: 37 CFR</td>
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<td>Plant Variety Protection Act (7 USC 2321 et seq.)</td>
<td>Granting of patents for sexually reproduced varieties of plants</td>
<td>New varieties of sexually reproduced plants</td>
<td>USDA-Agriculture Marketing Service (AMS)</td>
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<td>Regulations: 7 CFR 180</td>
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<td>Judicial Decisions:</td>
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<td>Diamond v Chakrabarty</td>
<td>Supreme Court held that genetically engineered bacterium was patentable.</td>
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<td>Court cited NIH guidelines in decision as addressing the problems of genetic engineering</td>
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<td>447 US 303 (1980)</td>
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<td><strong>VI  AIR AND WATER EMISSIONS</strong></td>
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<td>Clean Air Act (42 US 7401-7642)</td>
<td>Requires emission standards to be set for hazardous air pollutants where there is no applicable ambient air quality standard.</td>
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<td>EPA</td>
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<td>Discretionary authority; no genetically engineered organisms now included, but could be set for biotechnology products if concern warranted.</td>
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<tr>
<td>Regulations: 40 CFR 61</td>
<td>Sets national emission standards for specific hazardous air pollutants</td>
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<td>EPA</td>
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<td>Clean Water Act (33 USC 1251-1376)</td>
<td>Pollutant discharges without National Pollutant Discharge Elimination System (NPDES) permit unlawful. Pollutant defined to include living organisms requires EPA to establish effluent limitations for point sources</td>
<td>Genetically engineered organisms or byproducts that are discharged into the waters of the U.S.</td>
<td>EPA, States</td>
<td>States establish water quality standards States or EPA issue permits which incorporate technology-based limits and water quality-based limits</td>
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<td>Regulations: 40 CFR 122, 125</td>
<td>NPDES permit program</td>
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<td>EPA, States</td>
<td>Regulations developed for drug manufacturers, pesticide manufacturers and hospitals (See 40 CFR 401-469, below)</td>
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<td>40 CFR 120, 121</td>
<td>State water quality standards, State certification requirements</td>
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<td>EPA, States</td>
<td>Implemented by States and EPA. Source employing biotechnology will be required to adhere to permit restrictions.</td>
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<td>40 CFR 401-469</td>
<td>Effluent guidelines and standards for categories of point sources</td>
<td></td>
<td>EPA, States</td>
<td>Specific biotechnology category not issued, but each category could involve biotechnology products (e.g., part 439, pharmaceutical manufacturing part 440, hospitality and part 455, pesticides)</td>
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<td>Safe Drinking Water Act (SDWA) (42 US 300 et seq.)</td>
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<td>Section 300g-1</td>
<td>Authorizes promulgation of maximum contaminant levels for drinking water from public water systems.</td>
<td>Any physical, chemical, biological or radiological substance or matter in drinking water</td>
<td>EPA</td>
<td>No genetically engineered biological substances now included. Could be regulated if it presents a known or anticipated adverse effect on health.</td>
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<td>Section 300h-1</td>
<td>Requires state programs to regulate any injection of any substance into a well; provides for minimum regulatory standards for such programs in order to prevent underground injection that endangers drinking water</td>
<td>Any substance injected into the subsurface through a well</td>
<td>EPA</td>
<td></td>
<td>See 40 CFR Parts 144, 145, and 146. If disposed of by deep well injection, subject to stringent requirements for Class I wells regarding well construction, operation, monitoring, and reporting; if not a deep well, then would be Class V, subject only to a general prohibition on endangerment to drinking water sources.</td>
</tr>
<tr>
<td>National Environmental Policy Act (NEPA) Section 102(2) (C) (42 USC 4321-4361) Regulations: 40 CFR 1500-1508</td>
<td>Requires all agencies to prepare environmental impact statements on &quot;major Federal actions significantly affecting the environment.&quot;</td>
<td>All Federal Agencies</td>
<td>Administered by Council on Environmental Quality</td>
<td></td>
<td>Applies only to Federal actions (e.g., federally funded projects or premarket approval). Each agency develops its own guidelines or regulations under this Act. Procedural requirements generally held inapplicable to EPA actions.</td>
</tr>
<tr>
<td>Endangered Species Act of 1973, as amended, Section F (16 USC 1536) Regulations: 50 CFR 402</td>
<td>Requires Federal agencies to insure that their activities or programs will not jeopardize the continued existence of a listed species.</td>
<td>All species of fish, wildlife and plants listed pursuant to the Endangered Species Act</td>
<td>All Fed agencies</td>
<td>Consultation required with the U.S. Dept of the Interior or the National Marine Fisheries Service</td>
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<tr>
<td>Executive Order 11907 &quot;Exotic Species&quot;</td>
<td>Orders Executive Agencies (to extent permitted by law) to restrict the importation into the U.S., and introduction of exotic specimens into the natural ecosystems.</td>
<td>&quot;Exotic Species&quot; is defined to mean all species of plants and animals not naturally occurring, either presently or historically, in any ecosystem of the U.S.</td>
<td>All Fed agencies</td>
<td></td>
<td>Secretary of the Interior in consultation with Secretary of Agriculture is required to develop and implement by rule or regulation a system to standardize and simplify the requirements, procedures, and other activities appropriate for implementing the provisions of Executive Order 11907. No rule has been developed.</td>
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<tr>
<td>NOES</td>
<td>Decision applies only to research institutions receiving NIH funding</td>
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<td>HHS-NIH</td>
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<td>Preliminary injunction prohibits NIH guidance on environmental issues until appeal pending final judgment.</td>
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FOOD AND DRUG ADMINISTRATION

Statement of Policy for Regulating Biotechnology Products

AGENCY: Food and Drug Administration.

ACTION: Statement of Policy for Regulating Biotechnology Products.

SUMMARY: This notice describes the regulatory policy of the Food and Drug Administration applicable to biotechnology in general. Public comment is requested on scientific and policy issues raised by this notice.

ADDRESS: Written comments should be submitted to Docket #84N-0431, Dockets Management Branch, Food and Drug Administration (HFA-305), Room 4-82, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ann Danello, Food and Drug Administration (HF-5), Room 14-90, 5600 Fishers Lane, Rockville, MD 20857 Telephone: (301) 443-4650.

Introduction

A small but important and expanding fraction of the products the Food and Drug Administration (FDA) regulates represents the fruits of new technological achievements. These achievements are in areas as diverse as polymer chemistry, molecular biology, and micro-manufacturing. It is also noteworthy that technological advancement in a given area may give rise to very diverse product classes, some or all of which may be under FDA's regulatory jurisdiction. For example, new developments in recombinant DNA research can yield products as diverse as food additives, drugs, biologics, and medical devices.

Although there are no statutory provisions or regulations that address biotechnology directly, the laws and regulations under which the Agency operates place the burden of proof of safety as well as effectiveness of products on the manufacturer, except for traditional foods and cosmetics. The administrative review of products using biotechnology is based on the intended use of each product on a case-by-case basis.

This notice describes the regulatory policy of the FDA applicable to biotechnology in general. The manner in which regulations for biotechnology are implemented in the United States could have a direct impact on the competitiveness of U.S. producers in both domestic and world markets. Inconsistent or duplicative domestic regulation will put U.S. producers at a competitive disadvantage. In addition, certification systems which favor domestic products, if adopted by our trading partners, could create substantial nontariff barriers to trade and block market access. Therefore during the development of the U.S. regulatory procedures for biotechnology products, attention is being paid to the need for achieving consistency in national regulation and international harmonization. With respect to international harmonization the U.S. is seeking to promote scientific cooperation, mutual understanding of regulatory approaches international agreement on a range of common technical problems such as the development of consistent test guidelines, laboratory practices and principles for assessing potential risks. In achieving national consistency and international harmonization, regulatory decisions can be made in a socially responsible manner, protecting human health and the environment, while allowing U.S. producers to remain competitive.

The Agency possesses extensive experience with the administrative and regulatory regimes described as applied to the products of biotechnological processes, new and old, and proposes no new procedures or requirements for regulated industry or individuals. Public comment is requested on scientific and regulatory policy issues raised by this notice.

The marketing of new drugs and biologics for human use, and new animal drugs, requires prior approval of an appropriate new drug application (NDA), license, or new animal drug application (NADA). For new medical devices, including diagnostic devices for human use either a premarket approval application or reclassification petition is required. If the device is determined to be equivalent to an already marketed device, a premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) is required. For food products, section 202 of the act requires FDA preclearance of food additives including those prepared using biotechnology. Section 705 of the act requires preclearance of color additives. The implementing regulations for food and color additive petitions and for affirming generally recognized as safe (GRAS) food substances are sufficiently comprehensive to apply to those involving new biotechnology.

Genetic manipulations of plants or animals may enter FDA's jurisdiction in other ways; for example, the introduction into a plant of a gene coding for a pesticide or growth factor may constitute adulteration of the foodstuff derived from the plant, or the use of a new microorganism found in a food such as yogurt could be considered a food additive. Such situations will be evaluated case-by-case, and with cooperation with the U.S. Department of Agriculture (USDA), where appropriate.

The Regulatory Process

Congress has provided FDA authority under the act and the Public Health Service (PHS) Act to regulate products regardless of how they are manufactured.

General Requirements for Human Drugs and Biologics

A new drug is, in general terms, a drug not generally recognized by qualified scientific experts as safe and effective for the proposed use. New drugs may not be marketed unless they have been approved as safe and effective, and clinical investigations on human subjects by qualified experts are a prerequisite for determination of safety and effectiveness. Sponsors of investigations of new drugs or new drug uses of approved drugs file an Investigational New Drug Application (IND) to conduct clinical investigations on human subjects. The IND must contain information needed to demonstrate the safety of proceeding to test the drug in human subjects, including, for example, drug composition, manufacturing and controls data, results of animal testing, training and experience of investigators, and a plan for clinical investigation. In addition, assurance of informed consent and protection of the rights and safety of human subjects is required. FDA evaluates IND submissions and reviews ongoing clinical investigations.

Significant changes in the conditions of the study, including changes in study design, drug manufacture or formulation, or proposals for additional studies, must be submitted to FDA as amendment to the IND.

FDA approval of a New Drug Application (NDA) or an abbreviated New Drug Application (ANDA) is required before the new drug can be marketed. The NDA must contain:

- Full reports of investigations, including the results of clinical investigations, that show whether or not the drug is safe and effective;
- A list of components of the drug and a statement of the drug's quantitative composition;
- A description of the methods used, and the facilities and controls used for, the manufacturing, processing, and packaging of the drug;
- Samples of the drug and drug components as may be required; and
- Specimens of the proposed labeling.
NDA holders who intend to market an approved drug under conditions other than those approved in the NDA must submit a supplemental NDA containing clinical evidence of the drug's safety and effectiveness for the added indications. Extensive changes such as a changed formula, manufacturing process, or method of testing differing from the conditions of approval outlined in the NDA may also require additional clinical testing.

Section 351 of the PHS Act defines a "biological product" as "any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product * * * applicable to the prevention, treatment, or cure of diseases or injuries of man * * * *

Biologics are regulated similarly to new drugs during the IND phase; approval for marketing is granted by license, which is only issued upon demonstration that both the manufacturing establishment and the product meet standards designed to ensure safety, purity, potency, and efficacy. All biologics are subject to general provisions in the regulations that assure potency, general safety, sterility, and purity. In addition, specific tests and standards are established for particular products. To obtain a license, the manufacturer must submit information demonstrating that the manufacturing facility and the product meet FDA standards, and the facility must pass a prelicensing inspection. Licensed products are subject to specific requirements for lot release by FDA.

Manufacturers of new drugs and biologics must operate in conformance with current good manufacturing practice (CGMP) regulations, which address: adequately equipped manufacturing facilities; adequately trained personnel; stringent control over the manufacturing process; and appropriate finished product examination. CGMP's are designed to protect the integrity and purity of the product. Approval of the product application is also approval of the sponsor's process techniques.

**General Requirements for Animal Food Additives and Drugs**

Animal food additives and drugs are subject to similar mandatory requirements of the act as the like products for use in humans. Animal biologics, however, are regulated by the U.S. Department of Agriculture under the authority of the Virus-Serum-Toxin Act of 1913. Uncertainties as to whether a product fits the definition of a drug or biological drug are decided by a standing committee comprised of representatives from USDA and FDA.

Application for approval must go through the Investigational New Animal Drug (INAD) and New Animal Drug Application (NADA) process similar to that required for human drugs, as discussed earlier. The regulations pertaining to INAD's do not require that the Agency approve clinical investigations, only that the food being marketed from treated food-producing animals be safe for human consumption. The data must be specific for each animal species for which the drug is intended. For NADA approval, it must be shown that those drugs which are intended for use in food-producing animals and used in accordance with approved label directions, do not accumulate as unsafe residues in the edible tissues of the animal at the time of slaughter. Moreover, the manufacturer must submit acceptable methods for recovery and detection of any drug residue in edible tissues. To further insure drug quality, animal drugs, including medicated feeds, must be manufactured in conformance with CGMP's.

Substances that are used in animal feeds, other than drugs, and that are produced by recombinant DNA technology, are considered to be food additives and require approval of a food additive petition (FAP). Other products of new biotechnology may also be considered to be food additives, requiring an FAP. Animal drugs or food additives produced by recombinant DNA technology must be the subject of approval even if the active substance is shown to be identical or similar to the active substance in approved products produced by conventional methods.

**General Requirements for Medical Devices**

Medical devices for human use are regulated by requirements of the act as amended by the Medical Device Amendments of 1976. In general terms, a device is defined in the act as any health care product that does not achieve any of its principal intended purposes by chemical action in or on the body or by being metabolized. Devices include diagnostic aids such as reagents, antibiotic sensitivity discs, and test kits for in vitro diagnosis of disease. Veterinary medical devices are subject to the act but are not subject to precmearance requirements.

Regulations promulgated under the Medical Device Amendments control introduction of new devices into commerce. In May 1976 when these device amendments were enacted, expert advisory committees recommended classifications for all medical devices of the types marketed at that time. The law segregates medical devices into three classes:

- Class I devices are subject to the minimum level of control; general controls include the CGMP's.
- Class II devices have been declared to require performance standards to assure their safety and/or effectiveness. They must also meet the controls of class I.
- Class III devices require formal FDA approval of a Premarket Approval Application (PMAA) for each make and model of the device to assure its safety and effectiveness. The controls of class I are also required.

Before a manufacturer may introduce into commerce any medical device not previously marketed, the manufacturer must formally declare that intent to FDA and proceed along one of two legal avenues. The manufacturer can file a premarket notification to FDA seeking a determination that the device is substantially equivalent to a preamendment device and proceed to market the device subject to whatever controls apply to the older versions of the device depending on its classification. This is the so-called "S10(k)" process, which takes its name from a paragraph in the act.

A new device—that is, one not substantially equivalent to a preamendment device—is automatically a class III device requiring FDA approval of a PMAA unless FDA reclassifies it into class I or class II. In the premarket approval process, the manufacturer must establish that the device is safe and effective. This is typically accomplished by scientific analysis by the Agency of product performance and data from clinical trials, submitted by the manufacturer in the PMAA.

For a "significant risk device," as defined in FDA's regulations, the sponsor must submit an application to FDA for approval to conduct the investigation. This application is known as the Investigational Device Exemption (IDE). When the manufacturer believes there are sufficient data to establish the safety and effectiveness of its device, the manufacturer may file a premarket approval application, or PMAA. The law requires that FDA act on such an application within 180 days.

**Regulation of Specific Products**

Within the framework of FDA's statutes and regulations, strategies have been developed for the evaluation of various kinds of "biotechnological" or "genetically engineered" products, as well as for other products. These
strategies are product-specific rather than technology-specific. For example, review of the production of human viral vaccines routinely involves a number of considerations including the purity of the media and the serum used to grow the cell substrate, the nature of the cell substrate, and the characterization of the virus. In the case of a live viral vaccine, the final product is biologically active and is intended to replicate in the recipient. Therefore, the composition, concentration, subtype, immunogenicity, reactivity, and nonpathogenicity of the vaccine preparation are all considered in the final review, whatever the techniques employed in "engineering" the virus.

Scientific considerations may dictate areas of generic concerns or the use of certain tests for specific situations. For example, a hepatitis B vaccine produced in yeast (via recombinant DNA techniques) would be monitored for yeast cell contaminants, while distinctly different contaminants would be of concern in a similar vaccine produced from the plasma of infected patients.

In order to provide guidance to current or prospective manufacturers of drugs and biological products, the FDA has developed a series of documents describing points that manufacturers might wish to consider in the production of interferon, monoclonal antibodies, and products of recombinant DNA technology, as well as in the use of new cell substrates. These documents, called "Points to Consider", are available from the Agency upon request.

Administrative jurisdiction within FDA's various organizational units are the same for a given product, whatever the processes employed in its production.

Nucleic acids used for human gene therapy trials will be subject to the same requirements as other biological drugs. It is possible that there will be some redundancy between the scientific reviews of these products performed by the National Institutes of Health and FDA.

Obligations Under the National, Environmental Policy Act

All premarket approvals of FDA-regulated products are subject to the requirements of the National Environmental Policy Act (NEPA) as defined by the Council on Environmental Quality's regulations (40 CFR Parts 1500-1508) and as further described by FDA's NEPA-Implementing procedures (21 CFR Part 25, revision proposed December 11, 1979, 44 FR 71742-71752). For new products or major new uses for existing products, these procedures ordinarily require the preparation of an environmental assessment. An environmental impact statement is required if manufacture, use, or disposal of the product is anticipated to cause significant environmental impacts.

Scientific Issues Surrounding Specific Products

There are some scientific issues raised by specific products manufactured with recombinant DNA technology. First, the molecular structure of some products is different from that of the active molecule in nature. For example, the "human growth hormone" from recombinant microorganisms has an extra amino acid, an amino-terminal methionine; hence, it is an analogue of the native hormone. Such differences may affect the drug's activity or immunogenicity and these considerations, among others, may affect the amount of clinical testing required. However, FDA possesses extensive experience with evaluation of analogues of native human polypeptides, a number of which have been approved for marketing.

Second, approval of the product application for pharmaceuticals is also approval of the sponsor's processing techniques, and FDA must determine whether the quality assurance within the manufacturing process is adequate to detect deviations that might occur, such as the occurrence of mutations in the coding sequence of the cloned gene during fermentation. Such mutations, in theory, give rise to a subpopulation of molecules with an anomalous primary structure and altered activity. This is a potential problem inherent in the production of polypeptides in any fermentation process. One way FDA has dealt with these situations in existing IND's is to require batch-by-batch testing with appropriate techniques to ensure that the active drug substance is homogenous and has the correct identity.

Summary

FDA's administrative review of products, including those that employ specialized biotechnological techniques such as recombinant DNA in their manufacture, is based on the intended use of product on a case-by-case basis. Although scientific considerations may dictate areas of generic concerns for certain techniques, e.g., the possibility of contamination with adventitious agents or oncogenes when cultured mammalian cells are the source of a drug, the use of a given biotechnological technique does not require a different administrative process. Regulation by FDA must be based on the rational and scientific evaluation of products, and not on a priori assumptions about certain processes.

FDA Approved Drugs and Biologics of New Biotechnology (Recombinant DNA and Hybridoma Techniques)

Hormones

Human insulin (*)

In Vitro Diagnostic Products

Antihuman serum (**) Anti-Human serum anti-Cd (**) [IgG]Antibody to Hepatitis B Surface Antigen (**)

ENVIRONMENTAL PROTECTION AGENCY

Proposed Policy Regarding Certain Microbial Products

SUMMARY: This notice describes how EPA plans to address certain microbial products of biotechnology under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). The notice outlines EPA's plan for review of nonindigenous and genetically engineered microbial pesticides under FIFRA, and EPA's interpretation of the new chemical premanufacture notification (PMN) provisions of TSCA section 5 for new genetically engineered microorganisms used for commercial purposes. Public comment is requested on scientific and policy issues raised by this notice.

ADDRESS: Because some comments may contain confidential business information, all comments on the EPA portion of this notice should be identified by Docket Number OPTS-00049 and addressed to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

Information submitted as comments on the EPA portion of this notice may be denied confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

*Produced by recombinant DNA technique.
**Produced by hybridoma technique.
Comments received on the notice, except those containing confidential business information, will be available for review and copying from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, in the TSCA Public Information Office, Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT:
For general information including copies of the following EPA portion of this notice and related materials: Edward A. Klein, Director, TSCA Assistance Office (TS-798), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800-424-0065), In Washington, D.C. (202-554-1404), Outside the USA: (Operator-202-554-1404).

For technical information regarding the FIFRA sections of the EPA proposed policy: Frederick S. Eitz, Hazard Evaluation Division (TS-768), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1123, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-9307).

For technical information regarding the FIFRA sections of the EPA proposed policy: Anne K. Hollander, Office of Toxic Substances (TS-794), Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, (202-382-3852).

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I. Introduction
A. Scope of This Notice
The Federal Insecticide, Fungicide, and Rodenticide Act provides EPA authority over pesticidal products, including the authority to review and register new pesticides; the Toxic Substances Control Act provides EPA authority over non-pesticidal, non-food, and non-drug products, and requires EPA to review "new chemical substances" before commercial manufacture. These statutes will apply to certain commercial products of biotechnology, just as they already apply to chemical and biological products developed by more conventional methods.

This notice describes how EPA plans to address certain microbial products under FIFRA and TSCA. It explains the scope of coverage and procedures for review under both statutes, and it highlights the similarities and differences between treatment or nomenclature issues of biotechnology applications. In doing so, the following questions are addressed:

1. Which products of biotechnology may be subject to review under FIFRA or TSCA?
2. How does the Office of Pesticides and Toxic Substances (OPTS) propose to use its authority under FIFRA and TSCA to review products of biotechnology?
3. Should the procedures used under FIFRA and TSCA to review conventional products be changed in the review of nonindigenous and genetically engineered microbial products used for environmental and consumer applications?
4. What data requirements should be applied to microbial products under FIFRA and TSCA?

This notice primarily addresses microorganisms used as commercial products, emphasizing those areas in which EPA believes its oversight will contribute most to human or environmental safety, and where the application of FIFRA and TSCA are most appropriate. Chemical products derived from microbes, plants and animals will also be discussed briefly in the respective units pertaining to FIFRA and TSCA.

Although the microorganisms discussed in this notice include naturally occurring, indigenous microbes as well as nonindigenous and genetically engineered microbes. emphasis has been placed on the latter groups. "Nonindigenous" or "exotic" microbes are naturally occurring microorganisms placed in environments where they are not native. "Genetically engineered" organisms are defined in the glossary to this notice.

In the approach discussed in this notice, nonindigenous and genetically engineered microbial pesticides may, on a case-by-case basis, be subject to greater data requirements under FIFRA than other microbial pesticides. Genetically engineered microorganisms used for non-drug, non-food, or non-pesticidal purposes (such as pollution control or enhanced oil recovery) would be subject to premanufacture review under TSCA.

Proposed approaches under FIFRA and TSCA are discussed in detail in Units II and III of this notice. Unit IV identifies intra-agency, interagency, and international activities, and references are found in Unit V.

B. Common Issues Under FIFRA and TSCA

FIFRA and TSCA provide authority to review certain products of biotechnology before commercial manufacture, including microbial products used in environmental and...
consumer applications. These two statutes, both of which are administered by EPA through OPTS, have numerous similarities, even though they entail different responsibilities and apply to different classes of products. One goal of the two OPTS offices responsible for administering these statutes—the Office of Pesticide Programs (OPP) and the Office of Toxic Substances (OTS)—is to develop a consistent program within the constraints of the two statutes.

In developing this program, OPP and OTS are addressing a number of common issues. These issues are identified here and discussed more fully in subsequent units of this notice.

1. Risk assessment information needs. A major common issue is the need to determine what information is necessary for assessing the risks posed by nonindigenous and genetically engineered microorganisms. Although OPP has experience with regulating naturally occurring microbial pesticides, there is concern about potential human or environmental risks specific to nonindigenous and engineered microbes. As a result, the type and amount of information needed to assess any special risks of these microbial products will be determined on a case-by-case basis, as discussed in Units II.F and III.E.

2. Direct release of microorganisms to the environment. A second common issue is when at what stage EPA should review certain microbial products before any direct release to the environment, such as small-scale field testing. The Agency believes that review of small-scale field testing of nonindigenous and genetically engineered products is necessary in order to provide adequate protection to human health and the environment. Comments are requested on this issue, which is discussed in Units II.F and III.B.5.

3. Plants and animals. A third common issue is whether it is necessary or appropriate for OPTS to address genetically engineered plants and animals. Currently, OPP has exempted plants and animals used as pesticides from review under FIFRA because they are addressed by other Federal agencies. EPA also believes that other statutes and regulations are likely to be more appropriate for regulating engineered plants and animals used for purposes potentially subject to TSCA (e.g., production of fiber or lumber). Therefore, EPA does not propose that plants and animals be subject to TSCA review. This issue is discussed in Units II.B and III.A.3 of the notice.

4. Coordination with other Federal agencies. A fourth common goal of OTS and OPP is to coordinate with other Federal agencies with interests in biotechnology, including the U.S. Department of Agriculture (USDA), the Occupational Health and Safety Administration (OSHA), the Department of Health and Human Services (HHS), the Department of Commerce, and others. Such coordination can eliminate regulatory overlaps, achieve a clear delineation of each agency's responsibility, and insure a consistent Federal approach in coordinating Federal research sharing information on risk assessment methods for products of biotechnology.

Coordination with the USDA, in particular, is important to the EPA because USDA has jurisdiction over some of the same organisms which EPA regulates. The fact that a plant-associated microorganism may be subject to an EPA law does not exempt it from any applicable statutes administered by the USDA. For example, any microbes which are plant pathogens are subject to the USDA Plant Pest Act, and all microbes used as pesticides are subject to FIFRA. Therefore if a microbe is a plant pathogen and a pesticide, it is subject to both USDA and EPA laws. Similarly, microbes which are sold in conjunction with seeds fall under various seed certification programs, even though they may also be subject to FIFRA or TSCA because of their intended uses.

EPA and USDA will work cooperatively and simultaneously in the evaluation of genetically engineered products which fall under the jurisdiction of both agencies. For further information on the applicable authorities of EPA and USDA refer to the EPA policy statements on TSCA and FIFRA, and to the USDA Statement of Policy elsewhere in this notice.

Interagency coordination is discussed further in Unit IV.B.

5. Need for a balanced approach among safety, regulation, and innovation. The potential benefits of biotechnology are enormous, both to consumers who will enjoy new, enhanced, or less expensive products, and to the economy as a whole. Despite this potential, biotechnology is still in its commercial infancy, and innovation and commercial development in the field is extremely sensitive to regulatory uncertainty.

Both FIFRA and TSCA are risk-balancing statutes, drafted by the Congress to require a balance between the restrictions and higher costs created by a regulation and the lower risks to public health and the environment. Under both statutes, therefore, EPA plans to develop a policy for biotechnology that addresses this balance, is supported by sound science, and incorporates new information as it becomes available.

II. Applicability of FIFRA to Nonindigenous and Genetically Engineered Microbial Products

A. General Scope of FIFRA

FIFRA establishes the Agency's authority over the distribution and use of pesticide products. Before the Agency can register a pesticide, FIFRA requires the Agency to have sufficient data to determine that the pesticide, when used in accordance with widespread and commonly recognized practice, will not cause (or significantly increase the risk of) unreasonable adverse effects to humans or the environment (see section 3(c)(5) and (7) of FIFRA). Such data are also specifically required in the regulations promulgated pursuant to FIFRA at 40 CFR 162.18-2.

The Agency has issued a final regulation, 40 CFR Part 158, published in the Federal Register of October 24, 1984 (40 FR 42956), specifying the kinds of data and information that must be submitted to EPA to support the registration of each pesticide under FIFRA. The Agency has also published the Pesticide Assessment Guidelines for microbial pesticides. This is an advisory document which is available through the National Technical Information Service (NTIS). The guidelines specify the standards for conducting acceptable tests, and provide guidance on evaluation and reporting of data, further guidance on when data are required, and examples of recommended testing protocols. The Agency must conduct a complete evaluation and review of the data submitted to support a pesticide registration prior to the Agency's determination of the registrability of the product with respect to the criteria set forth in 40 CFR 162.7(d) and (e) and 162.18-4.

More recently, the Agency has issued a statement of interim policy on small-scale field testing of nonindigenous and genetically engineered microbial pesticides. This policy, published in the Federal Register of October 17, 1984 (49 FR 40856), is discussed in detail in Unit II.F of this notice.

B. Scope of This Unit

This unit of the notice addresses those nonindigenous and genetically engineered microorganisms which are considered pesticides under FIFRA section 2(a) and which are defined as biological control agents. 40 CFR 162.5(c)(4) currently specifies that...
microorganisms when used as pesticides, are regulated under FIFRA. As indicated in Unit LB4.4 above, the Agency has determined that certain non-microbial living organisms which fall within the definition of biological control agents are already addressed by other agencies, specifically USDA and the Department of the Interior (DOI). Examples of these biological control agents are vertebrates, insect predators, nematodes, and macroscopic parasites. Therefore, pursuant to section 25(b) of FIFRA and 40 CFR 162.5(c)(4), these non-microbial biological control agents have been exempted from regulation under FIFRA. However, if EPA, in cooperation with other agencies, determines that certain biological control agents that are not being adequately regulated, these organisms would be referred to the agency of the appropriate agency, or would be added to the exceptions in § 162.5(c)(4) by amendment. In the latter case, those organisms would no longer be considered exempt from the provisions of FIFRA. This unit of the notice does not address any chemical pesticide product, or pesticide byproduct produced by microorganisms. Such chemicals are covered under current pesticide regulations, registration procedures, data requirements, and testing guidelines (40 CFR Parts 158 through 186; and Subdivisions D through O of the Pesticides Assessment Guidelines).

C. Background/History

1. Pesticide activities related to microbial pesticides. The first microbial pesticide (Bacillus popilliae) was registered in 1946. This pesticide was made of naturally occurring bacteria. However, it was not until the late 1960s and early 1970s that interest in microbial pesticides began to increase. As of 1983, there were 14 microbial pesticides used in 109 separate products registered for use in agriculture, forestry, mosquito control, and homeowner situations.

In recognition of the growing interest and concern about microbial pesticides, the Agency began (in 1974) sponsoring a variety of workshops, symposia, and panel discussions aimed at identifying the relevant safety concerns for microbial pesticides. As early as 1978, at an EPA symposium titled "Viral Pesticides: Present Knowledge and Potential Effect on Public and Environmental Health," the need for sensitive identification and detection methods as well as quality assurance provisions were clearly identified. In the same year, intramural and extramural research on developing methods for molecular characterization and genetic mapping of entomopathogenic viruses was initiated.

OPP issued a Policy Statement on Biorational Pesticides which was published in the Federal Register of May 14, 1979, (44 FR 23851). In it, OPP recognized microbial pesticides as distinct from conventional chemical pesticides, and committed OPP to developing appropriate testing guidelines within 2 years. In 1979, OPP commissioned an American Institute of Biological Sciences' expert panel to develop a "Human Hazard Evaluation Scheme for Biorational Pesticides." The final report of this expert panel formed the basis for the human toxacolony unit of the testing guidelines for microbial pesticides. The next year, OPP formally requested the EPA Offices of Research and Development (ORD) to develop and validate test methods for evaluating the safety of microbial pesticides to humans and the environment. OPP completed draft testing guidelines for Microbial and Biochemical Pesticides in 1980. The biochemical pest control agents include pheromones, hormones, natural insect and plant growth regulators, and enzymes, and the microbial pest control agents include bacteria, viruses, fungi, and protozoa. After review by the FIFRA Scientific Advisory Panel (SAP) and public comment, these guidelines were published as Subdivision M of the Pesticides Assessment Guidelines through the NTIS in 1993. The microbial pesticide portion of the Subdivision M guidelines applies to both naturally occurring and genetically modified microbial pesticides. However, the specific data that would be required for the registration of genetically modified microorganisms would be determined on a case-by-case basis by EPA. This approach was supported in the final report (September 13, 1983) of the Biorational Workshop (September 15–17, 1982) that was sponsored by ORD at the request of OPP. The Workshop was designed primarily to evaluate and review Subdivision M and the status of testing for the safety of microbial and biochemical pesticides to nontarget, nonhuman organisms; however, safety concerns relating to all nontargets, including humans, were addressed. The workshop-final report made a number of recommendations for improving the guidelines, but concurred with the philosophy and with the tiered testing scheme, and generally agreed with the safety testing proposed for registering naturally occurring microorganisms. Concerning genetically modified microbial pesticides, the report stated in part that each situation [application for registration] will require a case-by-case determination of test requirements for registration. The consensus was that any undesirable effects of genetically engineered agents could be detected at Tier 1 and testing any specially designed tests appropriate for the agent to be evaluated.

The Data Requirements for Pesticide Registration, 40 CFR Part 158, contain data requirements for microbial pesticides (including genetically engineered microbial pesticides) at § 158.370. These data requirements were previously reviewed by the FIFRA SAP as part of Subdivision M of the Pesticide Assessment Guidelines.

In 1983, OPP received its first inquiry regarding the applicability of FIFRA to a genetically modified substance, a bacterium to control ice nucleation on certain kinds of crops. The applicability of FIFRA to a naturally occurring non-nucleating bacterium was also considered at that time. The Agency concluded that bacteria which inhibit ice nucleation, whether naturally occurring or genetically engineered, are pesticides and fall under FIFRA jurisdiction (Ref. 1).

Recently, the Agency has addressed the issue of small-scale field testing of nonindigenous and genetically engineered microbial pesticides. As an interim policy, EPA is requiring notification under FIFRA prior to these activities in order to determine the need for experimental use permits. This interim policy, published in the Federal Register of October 17, 1984 (49 FR 40850), is discussed in detail in Unit IF1 of this notice.

2. Concerns related to microbial pesticides. Microbial pesticides, when naturally occurring and indigenous to the area of intended use, generally raise fewer risk concerns than conventional chemical pesticides. With regard to indigenous microbial pesticides, the Agency has already identified a basis for concern and hence, the need for adequate regulation under FIFRA.

When a microbe is applied as a pesticide in the environment, great numbers of the microorganisms are released outside (apart from) their host, at a discrete point in time (day of application), and spread over the biotic and abiotic components of the environment as well as adjacent areas (due to drift); hence, in terms of the number of nontarget organisms exposed, the number of different spaces (both biotic and abiotic), and the degree of exposure (number of microbes per nontarget organism), exposure to the microbe as a pesticide would probably be greater than under natural conditions. [Pesticide Assessment Guidelines, Subdivision M, p. 43.]
Many of the same types of concerns apply to both indigenous (naturally occurring) microbial pesticides and to nonindigenous and genetically engineered microbial pesticides, namely; infectivity, pathogenicity, toxicity, host range, virulence, and survivability. However, the Agency recognizes that potentially greater risks may exist from the use of nonindigenous and genetically engineered microorganisms as pesticides. For example, they could exhibit a broader host range, a new toxin, enhanced virulence, greater survivability, or greater competitiveness than their indigenous "parent" microorganisms. This could be accomplished by using techniques which alter or manipulate a naturally occurring microorganism's genetic makeup (for example, using recombinant DNA (rDNA) techniques).

One of the Agency's major concerns is that risks which are specific to nonindigenous and genetically engineered microbial pesticides would not be identified by the currently established testing scheme for naturally occurring (indigenous) microbial pesticides. Similarly, the Agency is concerned about the stability of the genetic material in a genetically modified microbial pesticide and about the specificity of an inserted gene segment. For example, our current data requirements would yield no information about the characteristics that the inserted genes are intended to express, and the potential for other characteristics to be unknowingly inserted and expressed. A related concern is the potential for transfer of genes from the genetically modified microbial pesticide to naturally occurring microorganisms, and thereby generating new potential risks. This phenomenon is known to occur with the transfer of genes controlling antibiotic resistance to organisms without known contact to antibiotics.

D. Current Regulatory Status of Microbial Pesticides

The pesticide data requirements, codified at 40 CFR 158.170, are applicable to microbial pesticides, both naturally occurring and otherwise. The Agency believes that these requirements are adequate for the assessment of indigenous microbial pesticides, and provide a basis for evaluating nonindigenous and genetically engineered microbial pesticides as well. However, the Agency believes that additional data or information, on a case-by-case basis, may be necessary to evaluate certain properties of nonindigenous and genetically engineered microbial pesticides. Part 158 explicitly provides the necessary flexibility to require additional data in this situation (§ 158.65) as well as the flexibility to waive data requirements that are not applicable (§ 158.45).

Nonindigenous and genetically engineered microbial pesticides would be subject to additional data requirements or information requirements as needed, depending on the particular microorganism, its parent microorganism, the proposed pesticide use pattern, and the manner and extent to which the organism has been altered or modified. Other requirements could include information on the genetic modification techniques used, the identity of the inserted gene segment (base sequence data or enzyme restriction map of the gene), information on the control region of the genes, a description of the new traits or characteristics that are intended to be expressed, tests to evaluate genetic stability and exchange, and/or selected Tier II environmental fate and toxicology tests.

OPP has broadened its definition of genetic engineering beyond that presented in Subdivision M of the Pesticide Assessment Guidelines to include more than just microbial pesticides modified by rDNA techniques. Therefore, microorganisms modified by rRNA techniques as well as by cell fusion, conjugation, microencapsulation, microinjection, directed or undirected mutagenesis, plasmid transfer, transformation, etc., are included.

E. Plan for Reviewing and Registering Nonindigenous and Genetically Engineered Microbial Pesticides Under FIFRA

This Unit describes the Agency's plan for reviewing and registering nonindigenous and genetically engineered microbial pesticides in order to estimate or predict potential human or ecological effects and the environmental fate of such microbial pesticides after their release into the environment. The Agency is seeking public comments on the merits of this plan. Appropriate revisions in the plan will be made by the Agency after review and evaluation of the comments.

1. Proposed plan. The Agency has developed the following strategy for considering the scientific and regulatory issues pertaining to nonindigenous and genetically engineered microbial pesticides:
   a. The established procedures and policies for registering pesticides as specified under 40 CFR Parts 150 through 189 will apply to nonindigenous and genetically engineered microbial pesticides.
   b. Upon receipt of the application for registration, a Federal Register notice will be prepared to announce the receipt publicly. The fact that the submission is for a nonindigenous or genetically engineered microbial pesticide will be highlighted in the notice. The notice will be mailed to interested groups and public comment will be solicited.
   c. The data and information requirements specified in 40 CFR 158.65 and 158.170 will apply to nonindigenous and genetically engineered microbial pesticides.
   d. Any additional data requirements will be determined on a case-by-case basis depending on the particular microorganism, its parent microorganism, the pesticide use pattern, and the manner and extent to which the microorganism has been altered/manipulated. These additional requirements could include:
      i. Information on natural predators and parasites.
      ii. Description of the natural habitat of the microorganism.
      iii. A comparison of the natural habitat with the proposed use site.
      iv. Information on the methods used to genetically alter the microbe.
      v. The identity of the engineering techniques used.
      vi. Information on the control region of the genes.
      vii. A description of the new traits or characteristics that are intended to be expressed.
      viii. Tests to evaluate genetic stability, transfer, and exchange.
      ix. Selected Tier II environmental fate tests.
      x. Selected Tier II toxicology tests.
   e. Requests for waivers of any of the requirements of Part 158.170 will be evaluated on a case-by-case basis depending on the particular microorganism, its parent microorganism, the pesticide use pattern, and the manner and extent to which the microorganism has been altered or manipulated.
   f. OPP will encourage potential registrants to meet with representatives of the Registration Division and the Hazard Evaluation Division (HED) prior to submission of their application to discuss their product and determine whether additional data beyond that specified in Part 158 would be necessary to evaluate the product and whether a waiver is warranted for any of the requirements in Part 158.
   g. OPP will seek informal scientific consultation during the pesticide application review process. This may
include ORD, OTS, the National Institutes of Health (NIH) Recombinant DNA Advisory Committee (RAC) and other departments and agencies as appropriate. Any consultation will be within the constraints of OPP’s Confidential Business Information (CBI) policies.

b. As needed, OPP will request the FIFRA SAP to consider any significant questions/concerns, the need for additional information/data, and/or to perform a technical review of OPP’s decision concerning the registration of any new or existing mold, bacteria, or virus. OPP will coordinate with the expert panel of the SAP and the consultation with the constraints of OPP’s policies. Current indications are that, at a minimum, certain additional information will be required and perhaps some additional data to address questions pertaining to host spectrum and stability of engineered agents.

c. OPP will solicit the recommendations of various groups (e.g., government, academia, public interest, and industrial) regarding the evaluation of nonindigenous and genetically engineered microbial pesticides and the environment. This will include further consultation with the participants of the ORD workshop held in 1992 at Gulf Breeze as well as consultation with NIH, USDA, EPA, National Institute for Occupational Safety and Health, and the biotechnology industry. Also, the recommendations from EPA’s Biotechnology Workshops will be reviewed and evaluated. (See the Public Record for further information on these Workshops.)

b. Based on findings from the consultations described above, OPP should then be able to better identify additional potential hazards or risks posed by nonindigenous and genetically engineered microorganisms, and the testing or additional research that would be needed to evaluate any potential hazards.

c. EEA will evaluate the question of when and whether data developed on one microorganism can be used to support the registration of another, closely related microorganism (e.g., a closely related strain of the same species), within the constraints of the exclusive use and data compensation programs of FIFRA.

d. EPA will modify 40 CFR Part 158, Subdivision M, and its regulatory policies and procedures. Current indications are that, at a minimum, certain additional information will be required and perhaps some additional test data to address questions pertaining to host spectrum and stability of engineered agents.

F Small-Scale Field Testing

Prior to obtaining a registration for a pesticide, applicants generally need to conduct field studies in order to gather product performance, use, and other data necessary to support the registration. Under Section 5 of FIFRA provides that a person may obtain an experimental use permit (EUP) authorizing limited use of an unregistered product or use of a registered product for an unregistered use before conducting field studies. 40 CFR Part 172 sets forth the regulations pertaining to EUPs, and Part 153 specifies the data required to be submitted to EPA before EPA will issue an EUP.

The conditions under which an EUP is required are specified at 40 CFR Part 172, which also provides guidance on how to determine whether an EUP must be obtained. Pursuant to §172.3, when a chemical or indigenous microorganism is being field tested only to determine whether it has value for pestcide purposes or to determine its toxicity or other properties, and the person conducting the test does not expect to receive and benefit in pest control from its use, an experimental use permit has not normally been required.

The Agency has, in the past, exercised considerable judgment and flexibility in determining when an EUP is required. As provided in §172.3, EPA now presumes that testing of a chemical or indigenous microorganism in small-scale field studies is for the purpose described above. Therefore, an EUP has not normally been required to support such testing. Small-scale field studies are described in §172.3(a); in summary, they comprise (1) small-scale terrestrial field studies that involve less than 10 acres of land, provided that any food crops involved in or affected by such tests shall be destroyed or consumed only by experimental animals unless a tolerance or exemption from tolerance has been established; (2) small-scale aquatic field studies that involve less than one surface acre of water, provided that waters that are involved in or affected by such tests will not be used for irrigation purposes, drinking water supplies, or body-contact recreational activities. Also, no such test shall be conducted in waters that contain any fish, shellfish, or other plants or animals taken for recreation or commercial purposes and used for food or feed unless a tolerance or exemption from tolerance has been established.

In situations where even small-scale field studies posed a serious environmental or human health concern, EPA has required an EUP. Section 172.3 explicitly recognizes that a wide variety of testing situations may arise, and that a flexible regulatory approach is needed to deal with these situations.

Chemical pesticides have no independent mobility and reproductive capability and therefore are not required to conduct an small-scale field studies their potential for causing adverse effects outside the treated area is extremely limited. Microbial pesticides, however, may replicate and spread beyond the site of application. Further, nonindigenous and genetically engineered microbial pesticides may not be subject to natural control or disruption mechanisms; they may be capable of spreading beyond the site of application with potential adverse effects. Therefore, small-scale field studies with nonindigenous and genetically engineered microbial pesticides would raise many of the same concerns as more extensive use of conventional pesticides.

The Agency is considering a change in 40 CFR 172.3 to require that applicants notify the Agency before they conduct small-scale field studies with nonindigenous and genetically engineered microbial pesticides and is interested in comments on the merits of this proposal. Until the Agency adopts a final approach to these pesticides, which will include the opportunity for public comment, notification is being required as an interim procedure for all small-scale field studies involving the direct release of nonindigenous and genetically engineered microbial pesticides into the environment. This interim procedure does not apply to studies conducted in contained laboratory, growth chamber, greenhouse, or other facilities where there is no direct release of the microbial pesticide into the environment. Notice of this interim policy, with a request for comments, was published in the Federal Register of October 17, 1984 (49 FR 46089). Based on the information contained in the notification, the Agency will determine whether an EUP is required.
Notification should include adequate information to allow the Agency to evaluate the small-scale field testing program. Each notification should include the following information, or, where specific information is not submitted, documentation of why it is not practically or necessary to provide the information:

1. Background information on the nonindigenous or genetically engineered microorganisms.
   a. Identity of the microbe and means of detection using the most sensitive and specific methods available.
   b. Description of the natural habitat of the nonindigenous or parent microorganism, including information on natural predators and parasites.
   c. Information on infectivity and pathogenicity to nontarget organisms.
   d. Information on the growth and survival of the microbe in the environment (e.g., laboratory or containment facility test data).
   e. If the microbe is genetically altered, the following information should be provided in addition to the information listed in numbers 1 through 4 above:
      (1) Information on the methods used to genetically alter the microbes, if any.
      (2) The identity of the inserted/deleted gene segment in question (host source, nature, base sequence data, or enzyme restriction map of the gene).
      (3) Information on the control region of the genes, and a description of the new traits or characteristics that are intended to be expressed.
      (4) Information on genetic transfer and exchange with other organisms.

2. Description of proposed test.
   a. The purpose or objectives of the proposed testing.
   b. A detailed description of the proposed testing program, including test parameters.
   c. A designation of the pest organism(s) involved (common and scientific names).
   d. A statement of composition for the formulation to be tested, giving the name and percentage by weight of each ingredient, active and inert, and where applicable the number of viable microorganisms per unit weight or volume of the product (or other appropriate system for designating the quantity of active ingredient).
   e. The amount of pesticide product proposed for use and the method of application.
   f. The States in which the proposed program will be conducted, and specific identification of the exact location of the test site(s).
   g. The crops, fauna, flora, geographical description of sites, modes, dosage rates, frequency, and situation of application on or in which the pesticide is to be used.
   h. A comparison of the natural habitat with the proposed test site.
      i. The number of acres, number of structural sites, or number of animals by State to be treated or included in the area of experimental use and the procedure to be used to protect the test from intrusion by unauthorized individuals.
      j. The proposed dates or period(s) during which the testing program is to be conducted, and the manner in which supervision of the program will be accomplished.
   k. A description of the program for monitoring and containment of the microorganism during the field test.
   l. The method of disposal or sanitation of plants, animals, soils, etc., which were exposed during or after the field test.
   m. Means of evaluating potential adverse effects and methods of controlling the microorganism if detected beyond the test area.
   Upon notification, the Agency will have 90 days to evaluate the notice. Applicants would be free to perform their field test after that time period unless otherwise informed by the Agency.
   The Agency also considered two other options when developing the interim policy. First, the Agency could treat nonindigenous and genetically engineered microbial pesticides under existing regulations in the same manner as indigenous microbial pesticides and chemical pesticides and not require an EUP or notification when the field test meets the criteria in § 172.3. This option would not impose innovation or product development of nonindigenous and genetically engineered microbial pesticides. However, it does not address the potential risks from direct environmental release of these microbes; it raises the question of whether the Agency is doing all that it should to prevent unreasonable adverse effects to humans or the environment; and it is inconsistent with the NIH RAC guidelines which require approval before rDNA altered microorganisms under its jurisdiction are tested in the environment. Second, the Agency could require an EUP for all field testing regardless of the acreage involved.
   While this option addresses the risk from direct environmental release, it could result in time delays and/or increased costs, which, in turn, would impede innovation, and impede the development of microbial pesticides which do not cause unreasonable adverse effects. The Agency believes that the notification procedures set out in the interim policy will allow EPA to evaluate the potential risks involved with field testing nonindigenous and genetically engineered microbial pesticides, while having only a minimal impact on the development of beneficial microbial pesticides for use in the environment.
   Upon notification, the Agency will have 90 days to evaluate the notice.
   Applicants would be free to perform their field test after that time period unless otherwise informed by the Agency.

3. Applicability of TSCA to Products of Biotechnology

A. General Scope of TSCA

TSCA, which was enacted in 1976, provides the Federal Government with authority to address risks posed by a broad range of "chemical substances." TSCA gives EPA authority to assess and control exposure to such substances through all phases of their commercial lifecycle—including research and development, commercial production, use, and disposal. A central feature of the Act is its focus on prevention and its emphasis on information development. By requiring EPA to review new substances before manufacture, and by giving it authority to require testing, TSCA makes it possible to act against risks before harm occurs rather than after the damage has been done.

1. Applicability to living organisms.
   TSCA provides EPA authority to review and regulate "chemical substances" in general commercial and other applications. As defined in section 3(2) of the Act, a "chemical substance" is "any organic or inorganic substance of a particular molecular identity, including (i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature."
   EPA's authority to review living organisms under TSCA is based on this definition. A living organism is a "combination of such substances occurring in whole or in part as a result of a chemical reaction or in part as a result of a chemical reaction or occurring in nature." Also, any DNA molecule, other nucleic acid, or other constituent of a cell, however created, is "an organic substance of a particular molecular identity."
The conclusion that nucleic acids as well as living organisms are "chemical substances" under TSCA is consistent with the TSCA legislative history, which makes it clear that the term "chemical substance" is to be interpreted broadly. The 1976 House Committee report notes that "the Committee recognizes that basically everything in our environment is composed of chemical substances and therefore the definition of chemical substance is necessarily somewhat broad." In recognition of this fact, the statute explicitly excludes the term "chemical substance" to naturally occurring substances (section 3(2)(A)).

Furthermore, EPA believes that TSCA authority over chemical substances extends to biotechnology products—including microorganisms used for purposes subject to TSCA—because Congress intended this Act to provide authority over substances not covered by other health and environmental laws. Other Federal authorities address specific types of products, such as pesticides, drugs, food, and certain agricultural products. However, certain uses of microbes now being developed do not fall under these other authorities. EPA jurisdiction over these new types of products (e.g., microorganisms used to degrade toxic pollutants) is consistent with TSCA’s coverage of other chemical substances similarly used.

2. General types of products subject to TSCA. TSCA coverage extends to chemical substances and mixtures used in a wide range of general industrial, commercial, and consumer applications. In the context of biotechnology, products potentially subject to review under TSCA include microorganisms in certain physically contained uses (such as the production of pesticides and other commercial chemicals and the conversion of biomass for energy) and in certain uses involving direct release to the environment (e.g., pollutant degradation, enhanced oil recovery, metal extraction and concentration, and certain non-food agricultural applications, such as nitrogen fixation). Section 3(2)(B) of TSCA, however, specifically excludes from the definition of "chemical substances" certain products regulated under other statutes. The most important of the excluded products are pesticides, tobacco and tobacco products, nuclear materials, foods, food additives, drugs, and cosmetics.

In implementing the Act, EPA has interpreted TSCA authority to cover pesticide intermediates, but not food, food additives, drug, or cosmetic intermediates. EPA explicitly stated this position in the reporting rules for the TSCA Chemical Substances Inventory in 1977, published in the Federal Register of December 13, 1977 (42 FR 49539). The Agency has followed the policy since then, and it intends to maintain the policy for products of biotechnology. Consistent with this policy, microorganisms used to produce pesticides would fall under TSCA jurisdiction, while the pesticide itself would fall under FIFRA. Microorganisms used to produce foods, food additives, drugs, and cosmetics, although they could be considered "intermediates" subject to TSCA, would not be reviewed under TSCA because they are already reviewed by the Food and Drug Administration (see the FDA Statement of Policy elsewhere in this notice). With respect to nuclear materials, those substances regulated under the Atomic Energy Act (source material, special nuclear material, or byproduct material) would not be subject to TSCA, but microorganisms (or chemical substances produced by microorganisms) that contain radionuclides will be subject to TSCA if used for TSCA purposes. EPA will work through interagency mechanisms to ensure that existing Federal coverage is adequate.

3. Plants and animals. The policy proposed in this notice applies to microorganisms, but not to plants and animals. Most genetically engineered plants and animals will be used for food or food-related purposes, which are excluded from TSCA. However, it is also likely that plants and animals will in the future be genetically engineered for non-food uses, such as production of fibers, wool, and rubber. Because of USDA's extensive involvement in this area and the fact that the major Federal expertise on plants and animals lies in USDA and DOI, EPA is not proposing that living plants or animals, either as whole organisms or as in vitro cultures, be made subject to TSCA requirements. One exception would be the insertion of gene segments from plants or animals into microorganisms subject to TSCA. In this case, plant or animal genetic material would be subject.

B. Premanufacture Notice Requirements

1. Description of authority. Section 5(a) of TSCA requires companies to notify EPA at least 90 days before beginning to manufacture or import a "new chemical substance" for commercial purposes. This reporting requirement is known as premanufacture notification, or PMN. New chemical substances are defined under the Act as substances not listed on EPA's Chemical Substances Inventory, a list of chemical substances in commerce (Ref. 35). Any chemical substance that is not listed by name on the Inventory or that is not "naturally occurring" is "new" and therefore subject to PMN requirements before commercial manufacture. (See Unit III.B.2.b for an explanation of the distinction between new and naturally occurring.)

EPA has implemented TSCA section 5 requirements in a rule published in the Federal Register of May 13, 1983 (48 FR 21722) and clarified in a notice published in the Federal Register of September 13, 1983 (48 FR 41132). This rule specifies review procedures and information requirements for new chemical substances. The following units describe the proposed applicability of these requirements to genetically engineered microorganisms.

2. Applicability of PMN requirements to certain products of biotechnology. Because genetically engineered microorganisms and nucleic acids are neither "naturally occurring" nor listed on the TSCA Inventory, EPA believes they are subject to PMN requirements. The units below propose definitions of "new" microorganisms (which are subject to PMN review), and "naturally occurring" microorganisms (which are not subject to PMN review) within the context of biotechnology. For a discussion of PMN applicability to isolated nucleic acids, refer to sections III.B.2.2 and III.D.2.

a. Summary of applicability. Consistent with its treatment of other chemical substances, EPA has concluded that microorganisms whose nucleic acids were produced through chemical synthesis are "new" and subject to PMN. EPA has also concluded that microorganisms produced by certain techniques that can be used to combine genetic material from organisms that do not exchange genetic material in nature should also be subject to PMN. The techniques that EPA considers as falling in this category include rDNA, rRNA and cell fusion.

Cell microinjection and cell microencapsulation can also be used to combine genetic material across genetic boundaries, but these techniques are just recently being adapted to microorganisms and it is not yet clear whether they could be successfully used to produce commercial substances. EPA requests comment on whether cell microinjection and cell microencapsulation are likely to be successfully used in microorganisms and therefore whether products of these techniques should also be considered "new."

Although EPA has concluded that substances produced by rDNA, rRNA
and cell fusion will be subject to PMN, it requests comment on implementation issues. PMN requirements will not be in effect for microorganisms produced through these techniques until the Agency has reviewed public comments and addressed implementation issues.

ii. Certain other techniques of microbiology are also used to transfer nucleic acid between microorganisms, but the Agency is uncertain whether these techniques will permit combinations that transcend natural boundaries. (EPA acknowledges that genetic boundaries in microorganisms are difficult to define because understanding of gene flow among microorganisms is changing.) Therefore, the Agency is uncertain whether these other techniques should also be considered to produce "new" microorganisms. Techniques in this category are transformation, transduction, transfection, and techniques that promote conjugation and plasmid transfer. The Agency requests comment on the appropriateness of PMN review for microorganisms produced through these techniques.

iii. EPA is uncertain as to whether microorganisms produced through techniques of undirected mutagenesis, such as irradiation or use of chemical mutagens, are "new." On the one hand, microorganisms that are very unlikely to evolve in nature may be produced through these techniques. On the other hand, undirected mutagenesis is similar to natural processes of mutation and it operates within a single gene pool. The Agency requests comment on whether products of this technique should be considered as subject to PMN.

iv. EPA has concluded that microorganisms found in nature and used commercially without deliberate genetic intervention are "naturally occurring" and therefore are not subject to PMN. The Agency also believes that artificially selected microorganisms fall into the general category of "naturally occurring."

Microorganisms produced through a combination of two or more of the above techniques would be subject to PMN if any single technique considered to produce "new" organisms were employed in their development.

b. "New" versus "naturally occurring" substances. In compiling the TSCA Inventory and in keeping to current, EPA distinguishes between "new" substances, which are subject to PMN, and "naturally occurring" substances, which are not. Under the Inventory reporting rules, the Inventory automatically includes (but does not specifically list) all "unprocessed" naturally occurring substances and naturally occurring substances that are processed only by "manual, mechanical, or gravitational means; by dissolution in water; by flotation; or by heating solely to remove water" (40 CFR 710.4(b)). (For the purposes of this notice, these substances are referred to as "naturally occurring"). Because naturally occurring substances are included on the Inventory as existing substances, they are exempt from PMN. On the other hand, chemical substances that are chemically extracted or reacted from naturally occurring substances are not naturally occurring. These substances had to be reported for the Inventory, and if they are not now listed on the Inventory, they are "new."

This approach reflects a general philosophy that human intervention at a relatively simple level does not remove a substance from the category of naturally occurring. The act of mechanically isolating a substance from nature does not alter its status as "naturally occurring" or make it subject to PMN. In short, two principles must be considered in determining whether a substance is exempt from PMN by virtue of being naturally occurring. First, it must be derived from nature. Second, the extent of human intervention in producing it must be limited.

The Agency believes that a similar logic should be used to determine whether an organism is "new." In principle, naturally occurring organisms are those that (1) exist as a result of natural events or processes, or (2) have been developed as a result of limited manipulation of natural processes. For example, normal events of reproduction or evolution do not produce "new chemical substances" subject to PMN, any more than chemical reactions in nature, unmediated by humans, create "new chemical substances." Similarly, human exploitation of natural reproductive processes, as in the case of traditional animal and plant breeding, does not create a "new chemical substance," any more than does extracting a nonliving substance by manual, mechanical, or gravitational means from a naturally occurring substance.

The techniques of modern molecular biology are revolutionary in that they allow humans to override natural genetic contraints, creating heretofore unknown arrangements of genetic material, and to synthesize genetic material de novo. New organisms produced through these techniques may have genomes that do not occur in nature, or gene pools substantially altered from those that would occur through the natural processes of reproduction.

Perhaps the most clearcut examples of techniques that can be used to create "new" organisms are the techniques of R-DNA, R-RNA, and cell fusion which allow the combination of genetic material from organisms that do not exchange genetic material in nature. Organisms produced through these techniques can be considered "new" in the sense that their natural gene pool—i.e., the total genetic information possessed by a population of organisms that naturally exchange genetic material—has been altered.

In theory, PMN requirements could be based strictly on this concept of the natural gene pool. Under this approach, organisms containing genetic material from organisms that do not exchange genetic material in nature or organisms whose gene pools had been otherwise altered, would by definition be "new."

However, in practice, this concept would be difficult to apply. Although the theoretical concept of the gene pool is clear, the actual borders of gene pools can be extremely difficult to determine. For plants and animals, the natural gene pool approximates the taxonomic unit "species," but the taxonomic boundaries between species are not always clearly established. Many sexually reproducing organisms that do not interbreed in nature may do so when natural reproductive barriers are removed by human intervention. It is even more difficult to define natural genetic exchange boundaries for prokaryotic organisms (Ref. 5). Their genetic material is exchanged through such mechanisms as conjugation, plasmid transfer, transduction and transformation. While it appears that there are boundaries for genetic exchange among microorganisms, there is no commonly accepted basis for describing these limits.

Given the elusiveness of a generally accepted definition of natural genetic exchange boundaries, and given the importance of human intervention in determining "newness," EPA believes that the most appropriate way to distinguish between "new" and "naturally occurring" microorganisms is by the methods or processes by which they are produced and the level of human intervention involved. Thus, while a biological definition of "new" and "naturally occurring" might in theory be preferable, EPA believes that such definitions may be unworkable for practical reasons. Therefore, the Agency proposes to determine whether a commercial microorganism is now or naturally occurring on the basis of the
techniques used to produce it. (For similar reasons, EPA relied on process-based distinctions for many conventional chemical substances when the TSCA Inventory was compiled. See Refs. 33 and 34. Inventory listing issues are discussed in Unit ILD.4.)

The Agency requests comments on its proposed mechanism for defining new microorganisms, and welcomes suggestions on other possible ways to demonstrate that a product is the equivalent of a naturally occurring substance.

c. Discussion of specific processes. The following paragraphs discuss EPA's proposed approach for distinguishing between "new" and "naturally occurring" microbes. The Agency requests comments on this approach. Comments should address:

1. The appropriateness of defining as "new" microorganisms produced through each of the techniques listed below.

2. Whether the underlying concepts of gene pool and degree of human intervention support the categorizations.

3. The potential for risk from microbial products developed through each of these techniques.

4. The practical considerations associated with a decision on each of the processes listed (e.g., whether any are now in commercial production, whether the technique is definable in meaningful and unambiguous terms, etc.).

5. The definitions of the techniques in the glossary, including the extent to which they are clear and unambiguous.

6. Other techniques now being used or under development that should be addressed.

7. Possible ways of defining genetic boundaries among microorganisms.

8. Possible ways of differentiating degrees of human intervention.

Chemical synthesis techniques are directed at in vitro synthesis of nucleic acids from simpler molecules, not mediated by living organisms (Ref. 12). The chemical synthesis of a substance not listed on the TSCA Inventory creates a new chemical substance subject to PMN, regardless of whether an identical substance is naturally occurring. As a result, EPA believes that synthesized nucleic acids and microbes containing synthesized nucleic acids should be subject to PMN requirements, if they are produced for TSCA commercial purposes.

ii. Microbial products of rDNA, rRNA, and cell fusion, that is, techniques that allow combinations in microorganisms of genetic material from organisms that do not exchange in nature. EPA believes that microorganisms which were produced by rDNA, rRNA, and cell fusion techniques should be considered subject to PMN. The Agency recognizes that these techniques can be used to combine nucleic acids from organisms that exchange genetic material in nature, and therefore can be used to create organisms that theoretically "could" occur in nature, or that could be produced by natural mutagenic events. Nevertheless, because these techniques involve direct human intervention at the cellular or subcellular level and allow genetic materials to be combined in organisms that do not naturally exchange genetic material, and given the practicality of a process-based distinction, EPA believes that the resulting organisms should be considered "new." rDNA, rRNA, and cell fusion techniques are defined, for the purposes of PMN requirements, in the glossary.

These techniques may also be used to produce deletions, e.g., losses of DNA sequences. Deletions generally lead to loss or modification of a function (e.g., loss of the frost-promoting activity of "ice-minus" bacteria). While deletions do not involve the mixing of gene pools and generally result in less hardy organisms, there can be circumstances where the loss of function may be significant (e.g., deletion may result in expression of otherwise repressed genes). Therefore, the Agency believes that deletions obtained with these techniques should be subject to PMN requirements. The Agency requests comments on this issue.

EPA believes these same arguments apply to microorganisms produced through other techniques that can combine genetic material from organisms that do not exchange in nature. Such techniques include cell microencapsulation and cell microinjection. Application of these techniques to microorganisms is in early stages of development. It is too soon to know whether they will be successfully used to produce "new" microorganisms for commercial use. Products of these techniques will be subject to TSCA only if they are applied to microorganisms. EPA requests comments on this issue.

Cell microinjection and cell microencapsulation are defined in the glossary of this notice.

iii. Microbial products of other biotechnology techniques that promote exchange of genetic material. Other techniques are being used to transfer genetic material between microorganisms; they are usually used among organisms that are closely related. These techniques include transformation, transduction, transfection, and techniques to promote plasmid transfer and conjugation. These techniques are defined in the glossary of this notice.

The Agency has considered the factors which it uses to define "new" organisms; in this case, they do not clearly indicate how the techniques should be categorized. First, it is uncertain whether these techniques permit combinations that transcend natural boundaries. The Agency recognizes that these techniques can be used to transfer genetic material that could be exchanged in nature, and that some of them involve natural mechanisms for gene transfer. However, it has been shown that these techniques, together with artificial selection, can be used to develop microorganisms with particular traits that have not been found in nature (e.g., combinations of plasmids from various organisms in a pollutant-degrading microbe [Ref. 14]).

Second, the fact that these techniques usually involve significant human intervention at the cellular or subcellular level, and the degree to which the transfer mechanisms are artificially promoted, suggest that the resulting organisms should be considered "new."

Given the uncertain and perhaps competing considerations described above, the Agency is unsure as to whether the products of these techniques should be considered "new," and requests comment on the issues.

iv. Microbial products of undirected mutagenesis. Certain techniques of biotechnology allow the development of microorganisms not by the combination of genetic material from different organisms, but by the artificial induction of mutations within organisms. These techniques include the long-standing use of mutagenic agents to develop mutant microorganisms for the production of foods, pharmaceuticals, and chemicals. Undirected mutagenesis—the random action of chemical and physical mutagens—can be used to produce qualitatively or quantitatively different gene products, including deletion mutations which may cause loss of function.

The question of whether these techniques produce "new" microorganisms can be viewed from several perspectives. On the one hand, it can be argued that products of undirected mutagenesis are naturally occurring because the changes induced could be detected in natural populations as spontaneous mutations. In addition, the process takes place within the natural gene pool of the population, and does not involve the introduction of
foreign genetic material. Human intervention, in this context, only accelerates the rate of occurrence and captures variation produced by mutation.

On the other hand, it may be argued that mutation plus selection techniques involve chemical processing that fundamentally alters the gene pool of the population of manipulated organisms, even though the gene pool has not been expanded by addition of foreign genetic material. Undirected mutation depends on chemical or other techniques that randomly and artificially induce changes in genetic material at a radically accelerated rate. Selection is used to preserve changes that might have been eliminated by natural processes. Therefore, this process may lead to microorganisms that have been fundamentally altered, resulting in quantitative or qualitative differences in functions unlikely to occur in nature. These arguments would lead to the conclusion that the techniques produce organisms which are “new” and hence subject to PMN.

EPA seeks comment on whether organisms produced by undirected mutagenses are appropriately considered new, or whether there is a way to distinguish between new and naturally occurring organisms within this group. (Unit III.G.1 of this notice discusses other authorities besides PMN that could be used to address mutated microorganisms; Unit III.D.4 discusses alternatives for addressing the inventory status of new substances already in commerce.)

3. Chemical substances produced by genetically engineered organisms. In many cases, genetically engineered organisms will be used to produce chemicals, such as amino acids, peptides, proteins, enzymes, and biopolymers. When these substances are not listed on the TSCA Inventory, they are subject to PMN requirements. However, many chemical substances that are likely to be made in the future by genetically engineered microorganisms are already listed on the TSCA Inventory (e.g., methane, methanol, bacterial amylase, L-phenylalanine), because they are now produced by conventional methods. An argument could be made that these substances are new if produced by genetically engineered organisms, regardless of whether substances of the same name, made by conventional methods, are listed on the inventory. However, EPA is not proposing at this time that chemical substances produced by genetically engineered organisms should be differentiated from existing products made by conventional methods.

The Agency recognizes that chemical substances produced by genetically engineered organisms could in some respects differ from the substances of the same name produced by other methods—for example, they could have different impurities. However, EPA anticipates that risks, such as those associated with impurities, can be adequately addressed through PMN review of the organism used to make the chemical substance. In reviewing a PMN for a microorganism used to produce a commercial product, EPA will pay special attention to any risks associated with residual organisms, organism fragments, or other impurities present in the final product. EPA will be able to use its section 5 authority to require data on these risks and to regulate the product purity, where necessary.

At the same time, EPA retains the option of defining substances produced by genetically engineered organisms as new, because the Agency is not yet certain whether the potential impurities in these substances will in fact always be reviewed by EPA through other mechanisms. For example, animal and plant cells used to produce new products are not subject to PMN under the proposed approach (refer to Unit I.IIA.3). If such cells were used to produce a product already on the inventory, the Agency would not receive a PMN on the cells, and would not be able to review the product for potential risks or impurities associated with the manufacturing process. Therefore, the Agency requests comment on the adequacy of its proposed approach.

EPA will revise the categories of chemical substances produced by genetically engineered organisms as new by generically modifying all Inventory listings to exclude substances produced by genetically engineered organisms. In this case, PMNs would be required for substances produced by genetically engineered organisms, even if chemical substances with the same name (but produced by conventional methods) were listed on the inventory. Once PMN review was completed, the substance would be listed on the inventory by process as well as composition.

Authority to narrow existing Inventory definitions in this way is provided by § 710.4(a) of the inventory reporting rules, which states that “EPA will rewrite the categories of chemical substances [on the Inventory] and make other amendments as appropriate.” EPA has generally maintained that it can narrow or otherwise modify Inventory listings under this section, as long as in so doing it does not require PMN review of chemical substances already in commerce. To avoid this possibility, the Agency, as part of any action to exclude products of genetically engineered organisms from the Inventory, would request the public to identify commercial chemical substances already being produced by genetically engineered microbes and would retain them on the Inventory.

In conclusion, EPA is not proposing at this time to amend the Inventory to differentiate products of genetically engineered organisms from substances produced by conventional methods. The Agency believes that (a) many of these products will be new under any definition and therefore will be subject to PMN requirements regardless, (b) in most other cases, PMN review of the new organism will be adequate to address risks associated with the synthesis and use of existing products, and (c) it could be administratively difficult to narrowly the existing listings without inadvertently delisting existing genetically engineered substances.

Nevertheless, EPA intends to consider this option if it finds that information provided in PMNs on the products of genetically engineered microorganisms is generally inadequate, that substances which could cause impurities in fact are not subject to PMN review, or that the PMN review of products of genetically engineered organisms will substantially add to public or environmental protection. Public comments on this issue are welcome.
4. Research and development exemption. Section 5(h)(3) of TSCA exempts new chemical substances produced only in small quantities solely for research and development (R&D) from PMN requirements ("small quantities" must be defined by rule). R&D includes research or testing of a substance's chemical, physical, production, and performance characteristics. As a result, the R&D exemption encompasses relatively broad scope of activities, including monitored performance testing. Under EPA's PMN rule (40 CFR 720.3(d)), "small quantities" are those "not greater than reasonably necessary" for the purposes of R&D. Therefore, current regulations put no specific quantitative limit on the size of R&D activities. These requirements are discussed more fully in the preamble to EPA's PMN rule and in the notice clarifying those rules, published in the Federal Register of September 13, 1983 (48 FR 41132).

The specific provisions of EPA's PMN rule addressing the R&D exemption (40 CFR 720.36 and 720.75(b)) are now subject to stay (48 FR 41132). Until final provisions are developed, persons conducting R&D field tests of new organisms must comply with section 5(h)(3) of TSCA and §710.3(y) of the Inventory rules. In particular, the R&D must be conducted under the supervision of a technically qualified individual, and manufacturers must notify all persons involved in the R&D activities of risks they are aware of.

An important issue for EPA in implementing the TSCA biotechnology program is whether significant risks could occur without Agency review if persons conducted R&D field tests of new microorganisms in an open setting. Concern for small-scale field testing of traditional chemicals is relatively low, because the amounts involved are likely to be small, and the area of application is geographically circumscribed. However, because microorganisms may reproduce and spread in the environment, EPA review at a later commercial stage for these types of products may be too late to prevent widespread exposure. The possibility of a gap in Federal authority to review field testing of genetically engineered organisms has been widely discussed. It was a major subject of the June 23, 1983 Congressional hearings on the environmental implications of genetic engineering (U.S. House of Representatives Subcommittee on Oversight and Investigations, and Subcommittee on Science, Research and Technology), and has been the subject of other discussions.

Up to the present time, NIH, through the RAC, is the major Federal agency that has reviewed field testing of microorganisms engineered by rDNA techniques. However, the NIH RAC's authority is limited to research sponsored by institutions which receive NIH funds for rDNA research. Its guidelines and review are not binding for privately funded ventures (although voluntary compliance seems to have been effective to date), and it does not address organisms produced through techniques other than rDNA. As a result, it is possible that genetically engineered organisms that would eventually be reviewed under TSCA could be released to the environment as part of a field test before any review had occurred.

To eliminate this possibility, EPA believes that it may be appropriate to require review of new microorganisms before they are tested in an open environment for TSCA purposes. One approach would be to limit the R&D exemption by rule to exclude field testing. Because living organisms might reproduce and spread in the environment, EPA believes that the quantities of organisms involved in field-testing may not be small for purposes of TSCA section 5(h)(3). Therefore, the Agency is considering initiating rulemaking to amend the definition of "small quantities solely for research and development" to exclude living microorganisms directly released to the environment. The effect of this amendment would be to eliminate the PMN R&D exemption for new field-tested microorganisms and ensure their review under TSCA before release. A number of difficult issues would have to be addressed in order to implement such an amendment to the R&D exemption. For example, clear definitions of "field testing" and "direct release to the environment" would have to be developed, so that researchers could determine what types of activities were subject. Greenhouse testing, for example, might involve release to the environment which could in some cases be significant. Should greenhouse testing therefore be considered "direct release"? Should EPA set containment standards for greenhouses as a condition for being subject to the R&D exemption? Should EPA incorporate some portion of the RAC guidelines as conditions for the R&D exemption? These and other questions would be addressed during the process of amending the R&D exemption. In the meantime, the Agency welcomes comments and suggestions on these and related issues.

Even under this approach, PMN requirements might not apply to purely academic or noncommercial field tests. TSCA section 5(h) specifies that, for the purposes of section 5, "manufacture" and "process" mean "manufacturing or processing for commercial purposes." Therefore, PMN requirements, including any requirements extended to field testing, might not apply to purely academic field testing conducted for basic research rather than commercial intent. This may create an anomaly, because any risks associated with the field testing of a microorganism are independent of the commercial intent of the tester. The NIH RAC already provides considerable protection, and EPA believes it is appropriate for purely academic research to remain in the domain of the NIH, but the RAC's mandate is limited to federally funded research and rDNA research. The issue of academic as well as commercial field testing is under discussion by the Federal Cabinet Council described in Unit IV.B.

The Agency requests comments on the potential risks posed by small-scale field tests, the appropriateness of the approach EPA is considering for addressing these risks, possible alternatives, and the need to address purely academic or other noncommercial field testing.

5. Other TSCA PMN exemptions. Section 5(h)[4] provides for several other exemptions for PMN requirements. The most important of these for biotechnology may be section 5(h)(4), which allows EPA by rule to exempt from PMN requirements chemical substances that it finds will not present an unreasonable risk. For example, it might be possible to develop partial or complete exemptions for microorganisms used in closed systems with appropriate methods of containment. EPA requests comments on how the section 5(h)[4] authority could be used to reduce the impact of PMN requirements for specific categories or uses of genetically engineered organisms.

Another important exemption provision may be section 5(h)(3), which provides for an expedited review (45 days rather than the full 60 days) for new chemical substances manufactured for test marketing. This exemption may be appropriate for field tests and other limited commercial applications.

C. Significant New Use Authority

EPA recognizes that any practical approach to defining "new...
microorganisms" under section 5 of TSCA will exclude some types of organisms and will therefore not address all potential risks. In particular, the approach outlined in this notice does not provide for PMN review of naturally occurring organisms introduced into environments where they are not native (nonindigenous microbes). In addition, organisms produced through techniques for manipulating organisms (such as undirected mutagenesis and artificial selection) may not be covered under PMN, depending on the policy that EPA finally adopts. Under some circumstances, these organisms could involve risk to human health or the environment. In fact, the examples of environmental problems from microorganisms involve naturally occurring, nonindigenous forms introduced into new ecosystems (such as the Dutch elm disease). If concern warrants it, these or other risks not covered under PMN review could be addressed under the discretionary authorities of TSCA, such as the significant new use provisions of section 5(a)(2).

Section 5(a)(2) authorizes EPA to determine by rule that a use of a chemical substance is a "significant new use." Once a significant new use rule is promulgated for a specified substance or category of substances, companies are required to notify EPA 90 days before manufacturing or processing the substance for that use. As a result, EPA would be able to review risks associated with the new use before it occurred. This authority could be used to extend PMN-like coverage where concerns for potential risks warrant. For example, if concern for certain new commercial uses of nonindigenous (exotic) microorganisms is sufficient, EPA could define these uses as "significant." Similarly, if organisms produced through undirected mutagenesis are determined to be naturally occurring and therefore not subject to PMN, and if it appears that they may pose potential risks, EPA could address these organisms through a significant new use rule.

EPA is not now proposing to begin a significant new use rulemaking for microorganisms. However, the Agency believes that this authority may prove useful in ensuring review of specific applications of microbes not covered by PMN requirements, and requests public comment on the need for such rules.

D. Implementation Issues

1. PMN requirements— a. Effective date. After reviewing public comments, EPA intends to issue a statement of policy, to be published in the Federal Register. This policy will identify which products of biotechnology are subject to PMN requirements and will announce an effective date for the requirement. The notice will also address the status of an "new" substance already in commerce. Under various alternatives EPA is considering, companies producing such organisms would be required to report their substances to the Inventory or submit a new PMN within a specified period of time. These alternatives are discussed in paragraph b below.

b. Status of substances now in commerce. Although EPA does not believe that microorganisms developed through recombinant or other advanced techniques of genetic engineering are new being used for activities subject to TSCA, it recognizes that microorganisms developed through less advanced techniques, such as undirected mutagenesis, are being used for TSCA purposes. Examples of such activities include use of microorganisms for water pollution control and production of commercial chemicals. In fact, the Agency has reason to believe that hundreds or even thousands of mutated strains are now being sold or offered for sale in commerce for non-drug, non-food, and non-pesticidal applications. If EPA determines that new substances produced through these techniques will be subject to PMN, it will have to develop an equitable approach to handling substances already in commerce.

EPA believes that the most appropriate approach may be to allow companies to report genetically engineered substances already in commerce for the TSCA Inventory without going through PMN. This might be done either through voluntary reporting (which might be appropriate if only a few companies were affected), or through a rule under TSCA section 8(a) and (b), EPA's authority for compiling and keeping current an Inventory of existing chemicals. The Agency believes that this approach is appropriate because its interpretation of the applicability of TSCA to biotechnology is relatively recent, and companies may have entered this area believing in good faith that they were not subject to PMN. An alternative would be to require PMNs from companies for any "new" organisms now in commerce. While this approach would mean that EPA would review these organisms under the PMN authority, it is not consistent with the preventive function of section 5—the uses subject to PMN notification would already have occurred—and could be extremely burdensome on industry and EPA's review resources. Therefore, EPA does not favor this alternative. EPA requests comments on these and other approaches to handling "new" organisms already in commerce, particularly with respect to their practical implications and their implications for health and the environment.

c. PMN rules and form. EPA issued a final PMN rule published in the Federal Register of May 13, 1983 (48 FR 21722) and clarified it in a notice published in the Federal Register of September 13, 1983 (48 FR 41132). EPA is revising several provisions of the rule—relating to the conditions of the R&D exemption and to data requirements in PMNs. It expects to propose revised language in the near future.

The PMN rule defines the chemical substances that are subject to notification requirements, specifies information requirements, establishes procedures for handling confidential business information, establishes EPA review procedures, and implements other provisions of section 5. EPA believes that in most respects these requirements are appropriate for PMNs on new microorganisms. However, certain aspects of the rule and the guidance given by EPA in the preamble may not apply. In particular, EPA does not believe that the PMN form required by the rule will be useful either to submitters of notices on new organisms or to the Agency. Therefore, it would not expect PMN submitters to use this form. In the future, EPA expects to develop generalized guidance for persons submitting PMNs on new microorganisms. In any case, however, companies would be encouraged to contact OTS well before submission of a PMN for more specific guidance on the level of data appropriate for the notice.

Unit III.E of this notice describes in general terms the kind of information EPA would expect to see in a PMN on a new genetically engineered organism.

EPA recognizes that there is a growing commercial enterprise that supplies biotechnology research reagents, including commercial production of vectors, linkage sequences, reagents for nucleic acid synthesis, etc. As long as these substances are sold solely for use in R&D activities by the companies purchasing them, they would be exempt from PMN. This is consistent with treatment of other research chemicals under TSCA (see PMN rule, 48 FR 21722, and clarification, 48 FR 41132).

EPA requests comments on the applicability of other aspects of the PMN rule to new biotechnology products.
2. Applicability to isolated nucleic acid fragments. Because PMN requirements apply to all isolated “new chemical substances” used for non-R&D purposes, and not simply to the nucleic acid in the new microorganism, these requirements would apply to isolated DNA and RNA fragments and recombinant DNA and RNA (e.g., plasmids), as well as to the “final” recombinant organism if it were used or distributed for purposes other than R&D. However, EPA believes that DNA fragments and plasmids will generally be isolated only within the context of R&D activities and therefore would not be subject to PMN requirements.

DNA fragments and plasmids could also be isolated for the purposes of medical testing. As either drugs or medical devices, such fragments would not be subject to PMN requirements.

EPA requests comments on the practical implications of these requirements to persons engaged in commercial biotechnology.

3. Confidentiality. Section 14 of TSCA provides for protection of confidential business information submitted under any authorities of the Act. Confidentiality provisions are addressed in detail in the preamble to the PMN rules and in the rule itself (40 CFR 720.30 through 720.90).

4. Inventory and nomenclature issues. After a new chemical substance has completed PMN review and entered commercial production, it is listed on the TSCA Chemical Substance Inventory. Subsequently, anyone may make the substance described on the Inventory for purposes subject to TSCA without submitting a PMN. For this reason, Inventory listings, particularly listings of substances of unknown or variable composition or biological materials (UVCBs), are of central importance in defining PMN requirements. To specify the product adequately, these listings include not only the substance name, but also a brief definition. An overly broad definition for a complex substance might allow the manufacture of substances with significantly different properties without PMN review, because they would fall within the general description on the Inventory. An overly narrow definition, on the other hand, might unnecessarily require new PMN submissions because of slight modifications in process or product composition. Any system for listing complex substances on the Inventory, therefore, requires a balance between practical and risk-related considerations.

In listing biotechnological substances on the Inventory, EPA must also decide how to identify isolated DNA and RNA segments and whether to identify nucleic acids within living organisms as nucleic acids or as microorganisms. EPA intends to work with interested members of the public to develop a listing scheme that defines microorganisms (or nucleic acids) unambiguously, is practical and comprehensive, and ensures that the listings are sufficiently broad to allow review of legitimately “new” or different microorganisms with the potential for different risks. Currently, a number of microorganisms are listed on the Inventory by genus and species. EPA, however, believes that the way in which these microorganisms are listed is too broad for genetically engineered microbes. More specific descriptors might also go into the Inventory definition of a new microorganism to more clearly identify it and differentiate it from other microbes. For example, a microorganism produced by rDNA techniques might be listed by such factors as the name of the source organism, the DNA used, the host, or other features. EPA is now investigating how these or other descriptors could be combined to develop adequate Inventory definitions.

EPA recognizes that much of this information may be confidential, just as the identify of numerous chemical substances now listed on the Inventory is confidential. When a substance’s identity is confidential, EPA lists the substance on the publicly available Inventory by a generic name, shielding the confidential information. Inventory confidentiality procedures are established in 40 CFR 710.7 and Subpart E of Part 720.

OTC has prepared a background document discussing possible Inventory listing systems in more detail. Persons interested in the nomenclature issue may obtain this document from the OTC Public Information Office at the address listed at the beginning of this notice. The Agency encourages the public to comment on the approaches it is considering and to suggest alternatives.

5. Issues related to other TSCA authorities. As discussed above, TSCA provides EPA a wide range of authorities to collect information, require testing of, and regulate exposure to TSCA-covered chemical substances and mixtures. However, EPA believes in general that the PMN authority will provide sufficient oversight of biotechnology products. Nevertheless, several existing requirements under TSCA impose responsibilities on manufacturers, processors, or distributors of all chemical substances. Therefore, these requirements may affect the biotechnology industry. The most importance of these authorities, sections 4(e), 6(e), and 13, are discussed briefly below.

a. Section 4(e). EPA issued a final section 4(e) rule, published in the Federal Register of August 22, 1983 (48 FR 39179) that requires manufacturers and certain processors of TSCA-covered chemical substances and mixtures to keep records of “significant adverse reactions to health or the environment... alleged to have been caused by the substance or mixture.” Persons who manufacture or process microbial products that fall under the TSCA definition of “chemical substances” should consult the final section 4(e) recordkeeping rule.

b. Section 6(e). Section 6(e) of TSCA requires manufacturers, processors, and distributors of chemical substances or mixtures to notify EPA immediately of any new information “which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment.” EPA issued a section 6(e) policy statement published in the Federal Register of March 16, 1978 (43 FR 11108) providing guidance on this requirement. Persons manufacturing, processing, or distributing microbial products for TSCA purposes will be subject to this requirement and should consult the policy statement to determine their responsibilities under section 6(e).

c. Section 13. Section 13(a) of TSCA prohibits entry into the United States of any chemical substance or mixture that is not in compliance with TSCA statutory and regulatory requirements. To implement this provision, the U.S. Customs Service issued a rule requiring importers of chemical substances in bulk or as part of mixtures to certify at the port of entry (1) that the substances in the shipment are subject to TSCA and comply with all applicable TSCA rules and orders, or (2) that the chemicals are not subject to TSCA (August 1, 1983, 48 FR 34734). EPA issued a notice published in the Federal Register of December 13, 1983 (49 FR 55462) interpreting these requirements.

Importers of naturally occurring products, such as humber, vegetable oils, and natural rubber, must comply with these certification requirements. Thus, importers of microbial products (including for use in R&D) are generally required to certify that their products comply with TSCA, or that they are not subject to the Act. Until PMN requirements for “new” microorganisms are in effect, the importer will be able to certify compliance, regardless of...
whether or not the microbial product is genetically engineered.

For further information on section 13 requirements, importers should contact the OTS TSCA Assistance Office.

E. Nature of EPA’s PMN Review

OTS has prepared a background document describing possible information that could be submitted in a PMN on a microorganism and a plan for conducting PMN reviews. This document is available from the OTS Public Information Office at the address listed at the beginning of this notice.

The following unit more generally describes the types of information and data that EPA would expect to receive in PMNs for genetically engineered microorganisms, and how OTS intends to conduct PMN reviews for these microorganisms.

Authority to obtain information.

Unlike pesticide and drug statutes, TSCA does not impose a priori testing requirements on new chemical substances. The Act requires submitters to provide certain information on chemical identity and exposure to the extent that it is “known or reasonably ascertainable” to the submitter. Submitters must also provide health and environmental test data in their possession or control. These basic information requirements are explained in detail in the PMN rule (48 FR 21722) and clarification notice (48 FR 41332).

EPA has 90 days, extendable to 180 days for good cause, to review the data submitted on a new chemical substance. After the review period has expired, manufacture may begin unless EPA has taken action to control the substance.

Where information provided in a PMN is insufficient for a “reasoned evaluation” of the health and environmental effects of the new substance, section 5(e) provides EPA with authority to ban or regulate the new substance, pending the development of data. To invoke this authority, EPA must find (a) that the substance may present an unreasonable risk, or (b) that the substance will be produced in substantial quantities, and it may reasonably be expected to enter the environment in substantial quantity or there may be significant or substantial human exposure to it (section 5(e)(1)(A)(ii)(II)).

EPA believes that this section provides adequate authority to control potential risks where specific concerns are identified or exposure may be significant. Because of the high degree of uncertainty associated with the use of genetically engineered organisms in the environment, there may be insufficient data from which to extrapolate or estimate risks. Also, because the organisms may reproduce and grow in the environment, the release of relatively small quantities may lead to substantial exposure. Therefore, in cases where data are insufficient for a reasoned evaluation of the risks and where even relatively limited amounts are released, the section 5(e) authority will be an appropriate tool to obtain data and, if necessary, to regulate genetically engineered organisms used for commercial purposes.

To avoid unnecessary action under section 5(e) or other authorities, persons likely to be subject to PMN requirements should consult EPA early to identify data and other information that might be developed for a PMN. Information needs are discussed in more detail below and in a background document accompanying this notice.

2. Types of information required.

Because of the variety of microorganisms and applications likely to be reviewed in the PMN program, and the absence of generally accepted principles of risk assessment for genetically engineered microorganisms, OTS does not believe that rigid guidance on minimum data is appropriate. For the foreseeable future, OTS intends to decide the level of information appropriate for a “reasoned evaluation” of engineered organisms on a case-by-case basis. However, as the Agency gains experience in the review of nonindigenous and genetically engineered microorganisms and their products under both TSCA and FIFRA, and with the development of risk assessment methods, EPA believes that it will be possible and desirable to develop more specific guidelines on the level of test data and other information that might be submitted and how these data might be used in the evaluation of products of biotechnology.

Data necessary for assessment of a microorganism will vary according to the risk potential of the organism. For example, OTS would generally need more definitive data on the use of a genetically engineered microbe in the open environment than in a closed system. Similarly, the Agency would generally expect more information on organisms that survive and reproduce than for those that will not survive in the environment, or that can be effectively contained. The Agency would be more concerned and would expect more information if the parent or subject organism is pathogenic or toxic to humans, plants, animals, or other microbes; if the parent or subject organism has a function that is ecologically disruptive (e.g., organisms which are extremely competitive for common organic substrates in soil); if the parent or subject organism has a poorly characterized genome; or if the genetic material is unstable or could be transmitted to other organisms.

In all cases, OTS would expect enough information to identify an organism unambiguously. Both to support an assessment of risk and to list the organism on the Inventory. This would include information on (a) sources of the introduced nucleic acids, (b) how the nucleic acids were manipulated, including information about hosts, vectors, etc., and (c) what protein or special function was produced. Data on the parent organisms and the resulting organisms might include physiological, pathological, genetic, cultural, taxonomic, and ecological characteristics.

If an organism is intended for use in physically contained systems, information about growth conditions, containment methods (including emergency back-up systems if the organism is potentially harmful or might be inadvertently released), workplace exposure and worker practices, possible releases, and disposal might be appropriate. If the organism is used to produce commercial substances, OTS would expect data on the purity of the final product and the presence of any residual organisms or contaminants in the product.

If the organism is to be used in the environment, EPA would expect additional information, including information on intended uses, the manner in which the organisms will be applied, and descriptions of the target environment, including the organisms and ecological systems potentially subject to exposure. Testing in microcosms or other simulated environments may be necessary to answer such questions as whether an organism may survive, replicate, be transported, or exchange genetic material with other organisms. Factors that limit the mobility or survivability of the organisms or their genetic material (e.g., via genetic transfer) will also be significant considerations in the risk evaluation. In addition, particularly where organisms may survive, test data such as those described in OPP’s Subdivision M Guidelines, described in Unit II of this notice, may be appropriate.

Submitters should also include information developed for an Institutional Biosafety Committee or the NIH RAC, or information related to health and environmental safety developed to comply with other statutes (for example, data developed on an organism originally used for food or drug
purposes might be applicable to later uses of the organism for TSCA purposes).

3. Conduct of review. The Agency recognizes the complex issues associated with the review of genetically engineered microorganisms, particularly when released to the environment. Because of the absence of formalized risk assessment methodologies and the limited data base in this area, expert judgment is critical in determining information needs and reviewing potential risks. The review of such organisms may require expertise in such areas as microbial, plant, and animal ecology and pathology; human health and environmental risk assessment of living organisms; and molecular and microbial genetics. Because of the range of expertise that may be required in any given case, OTS intends to supplement its expertise by drawing from other offices within EPA in the review of new microorganisms and to use expert consultants from other Government agencies and academia, where appropriate. The Agency also plans to rely on the federal Biotechnology Advisory Board and an EPA biotechnology advisory committee to provide expert advice and promote consistent review procedures. The details of this proposed advisory system are described in the preface to this FR notice.

Because of the complexity of review issues, and the limited length of the PMN review period, OTS will encourage persons to consult with it before submitting a PMN on a new microorganism. OTS routinely offers manufacturers the opportunity for prenotice consultation concerning PMN submissions; this would be particularly important for biotechnology. During the period of prenotice consultation, OTS would be able to provide guidance on appropriate levels of information for a notice, and manufacturers would be able to describe the specifics of their situation.

Within 5 days of receipt of a notice, OTS will, in accordance with section 5(d)(2), issue a notice in the Federal Register stating the identity of the new chemical substance, the category of use, a summary of test data submitted in the notice, and the submitter's identity. When information is claimed confidential, it will be shielded by a generic description. In addition, OTS will maintain a sanitized copy of the PMN in the OTS Public Information Office, at the address listed at the end of this notice. Other comments from interested members of the public on the PMN. The public is generally given 30 days to comment on a PMN after publication of the section 5(d)(2) notice.

IV Intra-Agency, Interagency, and International Activities

A. Coordination Within EPA

Several EPA program offices in addition to OTS have authority relevant to biotechnology (see the regulatory matrix elsewhere in this notice). The Office of Solid Waste and Emergency Response (OSWER), for example, will be responsible for regulating solid waste produced by companies using biotechnology and is exploring a variety of approaches for using genetically engineered microorganisms to degrade pollutants. The Office of Water has similar responsibility for process effluents, water pollution control, and other water-quality issues. In addition, since 1977 ORD has supported research in the use of engineered organisms to degrade pollutants and in the development of monitoring protocols for microbial pesticides. This research has formed the basis of OPP's testing guidelines for microbials, described in Unit II of this notice. Over the next several years, ORD will be increasing its research support to the program offices. A description of ORD's research agenda in biotechnology is available as a support document to this notice.

EPA is taking steps to ensure that the biotechnology activities of its program offices are coordinated and the expertise in each of the offices is shared. To achieve this end, EPA has organized an Agency-wide biotechnology committee, made up of senior staff from its various offices. This group will provide policy and scientific support to the different program offices. The panel will provide a mechanism for securing Agency experts for the review of nonindigenous and genetically engineered microorganisms and of technical documents prepared by the program offices.

B. Interagency Coordination

A number of other Federal agencies besides EPA have direct interest in the promotion or oversight of biotechnology. NIH, FDA, USDA, and OSHA have review and regulatory authorities over biotechnology. USDA in fact has the responsibility for the review of genetically engineered microorganisms, as described in Unit I.B.4. In addition, NIH, USDA, the National Science Foundation, the Department of Defense, and the Department of Energy, among other agencies, have committed significant resources to biotechnology research. The Commerce Department—particularly through the Patent Office, the International Trade Administration, and the National Bureau of Standards—has a major interest in economic and trade aspects of the biotechnology industry. The State Department has also been involved in international policy, scientific, and trade issues. EPA will be cooperating with these agencies as they implement their respective mandates.

EPA's particular concern for interagency coordination lies in the area of health and environmental risks. EPA representatives from ORD and OTS serve as nonvoting liaison to the NIH RAC. EPA's biotechnology committee described above will be able to provide guidance to the Agency's RAC representatives on specific environmental issues under review by that committee. More broadly, EPA is participating with other Federal agencies in a review by the Cabinet Council on Natural Resources and the Environment on Federal policies and regulations related to biotechnology. In addition, EPA is working with other agencies to address such issues as mechanisms for sharing Federal expertise and coordinating research and consistency of risk assessment methods and philosophies in the different agencies.

C. International Activities

Biotechnology raises issues of international as well as domestic coordination. Most of the U.S. major trading partners, including the European Economic Community nations and Japan, are promoting the commercialization of genetic engineering techniques and are reviewing possible regulatory approaches. Because risks from organisms introduced into the environment may be international in scope, and because the manner in which regulations for biotechnology are implemented in the United States will have a direct impact on the competitiveness of U.S. producers in both domestic and world markets, international cooperation is essential. Inconsistent or duplicative domestic regulations will put U.S. producers at a competitive disadvantage. In addition, certification systems which favor domestic products, if adopted by our trading partners, will create substantial nontariff barriers to trade and block market access. Therefore, during the development of the U.S. regulatory procedures for biotechnology products, attention will be paid to the need for achieving consistency in national regulation and international
harmonization. With respect to international harmonization the U.S. will seek to promote scientific cooperation, mutual understanding of regulatory approaches and international agreement on a range of common technical issues such as the development of consistent test guidelines, laboratory practices, and principles for assessing potential risks.

The Organization for Economic Cooperation and Development (OECD) has formed a Working Group on biotechnology safety and regulation. EPA, through OTS and ORD representatives, is participating with the Department of State, Agriculture, and HHS on the U.S. delegation. The goal of the OECD biotechnology working group is to review and monitor member nation’s biotechnology regulations and risk assessment approaches as a step toward international harmonization.

V. References

The following books, articles, reports, and memoranda were used in preparing this notice:

(1) Abramson, S.H. Associate General Counsel, Pesticides and Toxic Substances Division. Memo regarding the applicability of FIFRA or TSCA to microbial organisms used to control ice nucelation. To Don R. Clay, Acting Assistant Administrator for Pesticides and Toxic Substances. October 25, 1983.


(32) Talbot, B., Deputy Director, National Institute of Allergy and Infectious Diseases. December 21, 1983. Memorandum on questions for public comment and agenda for Recombinant DNA Advisory Committee to W. C. Garland, Director, Office of Recombinant DNA Activities, National Institutes of Health.

(33) U.S. EPA. Reporting for the Chemical Substance Inventory. Information Management Division, Regulatory Impacts Branch. Work Assignment 1–3, Subtask 5, Contract No. 69-01-5601.


VI. Public Record

EPA has established a public record for this statement of policy.

Records related to this document (docket number OPTS–69003) are available for inspection in Rm. E-107, 401 M St. SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The record includes all information considered by EPA in formulating this policy. References cited in Unit VI are available for inspection in Rm. E-107.
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401 M St. SW., Washington, D.C. 20460 from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The record includes all information considered by EPA in formulating this policy. References cited in Unit VI are available in the OTS Library, Room E-447. The list below describes the information in the record.

1. OSTS support and background documents on PMN review information needs and inventory listing prepared as background for this notice.

2. Consultant reports prepared under contract to EPA used in developing this notice.


4. EPA correspondence to persons outside EPA concerning applicability of TSCA to biotechnology.


6. A list of key events in the development of OPP’s regulation of microbial pesticides.

7. A background paper by Betz, et al., discussing the current regulatory status and the potential hazards posed by genetically engineered microbial pesticides, 1983.


11. Memo regarding Applicability of FIFRA or TSCA to Microbial Agents Used to Control Ice Nucleation, from OGC to OPTS, October 28, 1983.

12. Documents related to EPA’s biotechnology research strategy and biotechnology workshops developed by the Office of Research and Development.

The docket of the record detailing its specific contents is available in the OTS Reading Room.

DEPARTMENT OF AGRICULTURE

Statement of Policy for Regulations Biotechnology Processes and Products

Summary: This statement describes USDA’s regulatory policy regarding use of biotechnology processes and products in agriculture and forestry. It is not an exhaustive set of application requirements. It is intended to assist those entities engaged in biotechnology research, development, testing, evaluation, production, and application in understanding clearly how USDA will approach the regulation of industry’s processes and products.

Address: Send written comments by mail or hand comments to Ms. Karen Darling, Deputy Assistant Secretary, Marketing and Inspection Services, USDA, Room 242-E, Administration Building, 12th and Independence Avenue, SW., Washington, DC 20250. Telephone: Area Code (202) 427-2953.


Introduction: This document is intended to inform the public, scientists, and industry of USDA’s current perspective on the regulation of biotechnology processes and products. It describes the regulatory policies, the regulatory framework, and procedures for oversight in agriculture and forestry biotechnology.

Biotechnology is the application of biological systems and organisms to technical and industrial processes. Applied to agriculture and forestry, it is any technique that uses living biological systems to make or modify products, to improve plants or animals, or to develop microorganisms for specific uses. Although the use of living biological systems in the genetic manipulation of organisms dates from man’s recognition that animals and crop plants could be selected and crossed to produce a desired phenotype, during the past half-century, increased knowledge of molecular genetics has added to the sophistication of the genetic engineering of microorganisms. The manipulation or movement of genetic material by recombinant DNA technology arose about a decade ago and is often referred to as “modern biotechnology.” The development of monoclonal antibodies from hybridoma techniques is also referred to as “modern biotechnology.” The application of modern biotechnology has made it possible to perform genetic engineering procedures and to develop monoclonal antibody products with an increasing number of applications in agriculture and forestry programs.

Under the jurisdiction provided by numerous statutes (see attached matrix), USDA regulates and conducts research, among other areas, in animal biologies, organisms and vectors, importation and interstate movement of animals, plants, plant products, noxious weeds, seeds, insects, and other articles.

The USDA has regulated, overseen, or collaborated in developing a vast number of biotechnological products and processes, new and old. As one example, in the exercise of this regulatory authority, the Animal and Plant Health Inspection Service (APHIS) has issued within the last two years seven licenses under the Virus- and Serum- Toxin Act (21 U.S.C. 151-158) for five protozoal products by modern biotechnology procedures. These licenses were for bacteria, bacteriotoxoids, and monoclonal antibodies for immunological or diagnostic uses. Additionally, there are at least 12 new license applications presently under review on a case-by-case basis.

There exists in the agricultural and forestry community a system for the assessment of new cultivars, germplasm, or microorganisms before their commercial release. For decades, the agricultural community, including State, Federal, and industrial researchers, have continuously assessed the impact of plant, animal (including invertebrate), and microbial species in a wide range of crop and animal production systems, in order to assure sustainable agricultural production, as well as protection and preservation of the environment. The evaluation and approval procedures currently practiced are outlined in detail in a recent publication from the National Association of State Universities and Land Grant Colleges (NASULCG), Division of Agricultural Committee on Biotechnology.

Although USDA’s initial concerns about safety of the modern developments in biotechnology were at the laboratory level, technological progress has extended these safety concerns to field research and industrial applications and production. As a consequence, USDA emphasizes the need for agency oversight at all stages, including research, development, testing, evaluation, production, application, and disposal. To date, no unique or safety problems have been associated with products of genetic engineering, conventional or modern.

I. Mandate of the USDA

The mandate of the USDA, simply stated, is to protect and enhance agriculture and forestry in the United States.

In order to implement this broad mandate, USDA's authority includes responsibility to administer programs relating to research and development; to fund cooperative interaction, marketing and application of products research; to manage, protect, and enhance resources; and to regulate activities. In addition, the Department is chartered to develop new markets for U.S. agricultural commodities, to improve soil and land use techniques, and to improve agricultural production of animals and plants resistant to stress.

II. Historical Perspective

For decades, agriculturists and botanists have introduced nonindigenous organisms into the continental United States, enabling animals and plants not indigenous to North America to become an important part of our major food sources and to provide new ornamental species. USDA conducts research on these organisms and has developed regulatory processes which control the introduction of foreign organisms into the United States based on their potential application to natural and agricultural ecosystems. These processes have effectively safeguarded our agricultural ecosystems against the introduction of foreign pests and pathogens.

Many plant and animal species have also been introduced through various genetic techniques. In fact, scientists have long been able to create new gene combinations within single organisms—even creating new species—through mutagenesis, cross-hybridization, and other breeding techniques. USDA has vast amounts of expertise and scientific data relevant to the evaluation of safety and efficacy of organisms or other products derived from modern biotechnology procedures, because these products are not fundamentally different from products obtained by conventional technology.

The USDA has been in the forefront in the development of modern biotechnology. USDA representatives were active participants at the early meetings and workshops where policy decisions were made regarding recombinant DNA research. In 1976, a committee was formed in USDA for purposes of coordinating research policies among the various agencies in the Department, and between the USDA, the National Institutes of Health (NIH), and the National Science Foundation (NSF). This committee, authorized by the Secretary, is called the Agriculture Recombinant DNA Research Committee (ARRC).

Further, with regard to DNA research the USDA recognized that a uniform set of guidelines should be followed for research regardless of the source of research funding. The Department endorsed and adopted the NIH Guidelines for Research Involving Recombinant DNA Molecules for coordinating interagency research review, and established an internal policy requiring compliance with these guidelines as a condition for receiving funds for research.2

III. Regulatory Philosophy

USDA anticipates that agriculture and forestry products developed by modern biotechnology will not differ fundamentally from conventional products.

We believe that the existing regulatory framework of USDA combined with the NIH Guidelines which are mandatory for all research grants are adequate and appropriate for regulating research, development, testing and evaluation, production, and application, of these biotechnology products. Should any new processes or products be shown to require additional regulatory measures, USDA will amend its regulations or will request additional authority.

IV. Existing Regulatory Framework

A. Overview

The various animal quarantine and related laws, namely 21 USC 102-105, 111, 114a-114h, 115-120, 124-124h, and 135-135b, provide the authority to regulate the importation, exportation, and interstate movement of certain animals to prevent the introduction and spread of contagious, infectious, or communicable diseases of animals or poultry.

Under authority of various plant quarantine and related laws, namely 7 USC 147a, 148, 149a-149e, 150a-158, 151-153, 154-156, and 2601-2613, USDA: (1) regulates the importation into and dissemination within the United States of plant pests, nursery stock, and other plants and plant products, and any product or article which may contain a plant pest at the time of movement, (2) inspects plants and plant products offered for export, and (3) issues permits, promulgates quarantines, and regulates movement of noxious weeds.

assure purity, safety, identity, and immunogenicity as provided in 9 CFR 113.

3. Ingredients of animal origin used in production must meet accepted standards of purity and quality. Special tests for extraneous agents are required by 9 CFR 113.53 for all materials not subject to heat sterilization.

4. Primary cells and cell lines used for production of Master Seed or vaccine must be tested in accordance with 9 CFR 113.51 and 113.52, respectively. All cell substrates must be shown to be free of bacteria, fungi, mycoplasma, viruses, and other extraneous agents. Cell lines must also be characterized and categorized to establish genetic stability through the maximum number of passages used for production. Tumorigenicity and oncogenicity tests must also be conducted on cell lines if direct or indirect evidence indicates that the cells may induce malignancies in the species for which the product is intended.

5. Immunogenicity of vaccines must be supported by statistically valid host animal immunization and challenge studies. These studies are conducted using products produced to represent minimum levels of antigenic mass as provided in the filed Outline of Production. Studies must be designed to correlate the host animal efficacy of the reference product with a potency test that will be used to test each market serial prior to release. Inactivated products are correlated with animal potency tests or quantitative in vitro procedures. For live vaccines, host animal immunogenicity tests are correlated with bacterial counts or virus titers. Release of live vaccines for marketing requires a bacterial count or virus titer sufficiently greater than that used in the immunogenicity test to assure that when tested within the expiration period, each serial and subserial has at least a bacterial count two times or a virus titer 10^7 greater than that used in the host animal immunogenicity test.

6. Firms are also required to demonstrate their ability to produce each product in a consistent and satisfactory manner. Three consecutive satisfactory serials of product must be produced in accordance with an approved Outline of Production in licensed production facilities. Samples of these serials are forwarded to National Veterinary Services Laboratories for prelicense testing to confirm the manufacturer's results.

7. Safety of products must be demonstrated by laboratory and host animal studies. Tests may also include field trials conducted under normal husbandry conditions.

Upon satisfactory completion of all requirements, including review and acceptable of labels, a U.S. Veterinary Biological Product License may be issued.

Products Derived From Modern Biotechnology

Veterinary biological products prepared using modern biotechnological procedures such as recombinant DNA, chemical synthesis, or hybridoma technology will be treated similarly to products prepared by conventional techniques. The unlimited number and kind of products that may result from these modern biotechnology procedures make it impossible to define all requirements in specific terms. Each product is evaluated individually to determine what will be necessary to establish its purity, safety, potency, and efficacy. Scientific considerations may dictate areas of generic concerns or the use of certain tests for specific situations. Special assays, preferably using in vitro methods, may be required for potency and stability determinations. Additional tests may be required to assure safety, especially when live microorganisms are present in the biological products.

The Animal and Plant Health Inspection Service (APHIS) will continue to avail itself of additional expertise from the Public Health Service "Interagency Group to Monitor Vaccine Development, Production, and Usage." This interagency committee will be utilized to consider potential human health hazards from the use of veterinary biological products and to review issues such as those arising from the possible use of viruses potentially pathogenic to man or animals.

In order to provide guidance to current or prospective manufacturers employing modern biotechnological methods, the following discussion of points likely to be useful is presented.

1. Recombinant DNA-Derived Products. This technology encompasses the isolation, characterization, and insertion of foreign DNA into vectors for the production of foreign gene products in suitable expression systems.

The genetic information coding for the product of interest and other sequences not indigenous to the host are referred to as foreign DNA. The specific cloned nucleotide segment coding for the desired product or other foreign DNA segments must be defined in data supporting each license application. These data must also include a description of the source of the DNA,
the nucleotide sequence, and the restriction endonuclease digestion map.

A vector is a cloning vehicle which provides a suitable origin of replication necessary for production of foreign DNA. Such replicons may be derived from plasmids, bacteriophages, or viruses such as vaccinia, bovine papillomavirus, adenoviruses, or SV40. A restriction endonuclease map of the vector construct describing structural genes, regulatory or promoter regions, insert orientation, and a description of readily detectable phenotypic traits on host cells will be required as supporting data.

Production of functional gene products depends on the efficient expression of cloned DNA-vector complexes in suitable host organisms. Tissue culture cells, bacteria, yeasts, and other cells may be used as hosts for replication of vectors. The mechanisms of transfer, the copy number, and the physical state of the constructed vector inside the host cell, integrated or extrachromosomal, should be described.

USDA’s licensing policy for veterinary biological products derived from recombinant DNA technology is evaluated on a product-by-product basis. USDA requires all licensed applicants or products derived from DNA technology to comply with the NIH Guidelines for research involving recombinant DNA molecules.

APHIS has executed a Memorandum of Understanding with the Food and Drug Administration to resolve jurisdictional or definitional questions regarding animal biologic products subject to the VST Act or as drugs under the Food, Drug, and Cosmetic Act (21 USC 301 et seq.). This memorandum was published on June 8, 1982, at 47 FR 26458.

2. Chemically Synthesized Antigens. When the product consists of chemically synthesized polypeptides, the appropriate amino acid sequences will mimic the antigenic site or epitope found in the native antigen where one exists. Supporting data shall include type, degree, and persistence of the immune response following administration of the synthetic peptide. Procedures used to increase or prolong an antibody response such as coupling to carrier proteins or addition of adjuvants, must also be described.

3. Monoclonal Antibody Products. The specificity and potency of monoclonal antibody products will be compared with that of similar polyclonal antibody products where appropriate. The specificity and sensitivity of monoclonal antibody products must be at least equal to that of antibody products of traditional polyclonal nature.

Monoclonal antibody products must be derived from Master Cell Stocks which meet the requirements of 9 CFR 113.52. Description of cell cloning procedures, preparation, and characterization of cell passages must also be provided.

The Outline of Production must provide a description of all processes including scale-up, ascites, fluid or cell culture supernatant preparation, purification, concentration, and inactivation. Mouse colonies must be screened to demonstrate freedom from adventitious agents, especially those detected by the mouse antibody production (MAP) test. If the MAP test discloses the presence of adventitious agents, the product shall not be released unless inactivation procedures approved by Veterinary Services have been performed.

4. Master Seeds. Bacterial or viral seed stocks used to prepare veterinary biological products must meet established procedures used to certify Master Seeds for biological products (9 CFR 101.7). The Master Seed for recombinant DNA derived products may consist of a plasmid or virus carrying the inserted gene. This constructed plasmid is then introduced into the appropriate eukaryotic or prokaryotic expression system selected for vaccine production. Genomic DNA may also be transfected directly into a variety of mammalian cells. Alternatively, in such cases, the stable transfected cell could be considered as the Master Seed.

The establishment of a Master Seed of constructed plasmids or transferred cells requires submission of background information concerning the recombinant DNA procedures used to isolate, purify, and identify genetic material from one source and the modification used for insertion of this material into a new host. Data from cloning, isolation, proliferation, and selection of genetically unique cells would be retained by licensed applicants.

Tissue culture propagated cells from vertebrate animals used for vector propagation and antigen production must meet the requirements of 9 CFR 113.51 or 113.52.

If a Master Seed has been accepted by Veterinary Services for use in a licensed product, further genetic modifications may be approved with reduced requirements for additional host animal efficacy studies.

Product and Serial Release

Each Outline of Production shall be prepared in accordance with 9 CFR 114.9. Outlines must include procedures to ensure consistency in production and recovery of specific antigenic material. Recovery procedures must include removal or excessive antibiotic levels (9 CFR 114.10) and undesirable fermentation byproducts such as excessive levels of bacterial endotoxins. Serial release tests for purity, safety, and potency with appropriate techniques will be required.

Pursuant to the Act of February 2, 1902, (21 USC 113), USDA has authority to make such regulations and take such measures as may be deemed proper to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals and/or live poultry from a foreign country into the United States or from one State or territory of the United States or the District of Columbia. Under this authority and the VST Act, the importation into the United States or interstate shipment of organisms and vectors is regulated under Title 9, Code of Federal Regulations, 9 CFR Part 122. Organisms and vectors are defined in 9 CFR 122.1 as entities which may introduce or disseminate any contagious or infectious disease of animals. Such substances may not be shipped interstate or imported without a permit. Permit applications must provide a complete description of the substances, intended use, location of the permittee, and safeguards to be observed. When appropriate, a review is conducted by the Administrator’s Parent Committee on Organisms and Vectors. Members of this committee have wide expertise in evaluating safety. Clearance may also require testing in high security facilities at the Veterinary Services Foreign Animal Disease Diagnostic Laboratory, Plum Island, New York.

C. Plants and Plant Products

Pursuant to authority granted by the Federal Plant Pest Act of May 23, 1937, as amended (7 USC 150 a through 150 j), and the Plant Quarantine Act of August 20, 1912, as amended (7 USC 151 through 164, 166, and 167), USDA has regulatory authority over the movement into and through the United States of plants, plant products, plant pests, and any product or article which may contain a plant pest at the time of movement. These articles are regulated in order to prevent the introduction, spread or establishment of plant pests new to or not widely prevalent in the United States. The regulations implementing this statutory authority are found in 7 CFR Parts 300 through 339.

The Federal Plant Pest Act and the Plant Quarantine Act would be
applicable to the movement of plants, plant products, and other articles and plant pests developed through biotechnological processes if such plants, plant products, other articles, or plant pests present a risk of plant pest introduction, spread, or establishment.

"Plant Pest," as defined by statute, means any living stage of any insect, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, of any processed, manufactured, or other products of plants (7 U.S.C. 150aa(c)).

"Movement," as defined by statute, means to ship, deposit for transmission in the mail, otherwise offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise (7 U.S.C. 150a(f)).

The following discussion describes the current requirements with regard to the movement into and through the United States of plants, plant products, plant pests, and other articles regulated by the Federal Plant Pest Act and the Plant Quarantine Act. In this regard, plant pests are discussed separately from plants, plant products, and other articles which may contain plant pests.

Plants, Plant Products and Other Articles

All nursery stock is prohibited from movement into the United States unless such movement is authorized under a permit issued by USDA (7 U.S.C. 154).

"Nursery stock" is defined to mean all field-grown florists' stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots (7 U.S.C. 159).

Additionally, USDA restricts through a permit system the importation of plants and plant products not included in the definition of nursery stock when it is determined that the unrestricted importation may result in the entry into the United States of injurious plant diseases or insect pests (7 U.S.C. 159).

The entry status of many plants and plant products, and permit requirements have already been determined and are reflected in the regulations.

The determination of whether to issue a permit allowing the importation of plants, plant products and certain other articles, the conditions that must be met prior to entry and distribution of such plants, plant products and other articles throughout the United States is made after an evaluation of the pest risk associated with these plants and plant products.

In the evaluation process, computerized data of plant pests and diseases known to occur worldwide and a literature search of plant pests and diseases associated with the plants, plant products or other articles requested to be imported are conducted to determine:

- What plant pests or diseases are known to infest, infect, or to be carried by such requested plant, plant product, or other articles;
- Whether such plant pests or diseases are new to or not widely prevalent (i.e., "exotic" plant pests or diseases) in the United States; and
- Whether such plant pests or diseases are found to exist in the country where such a plant, plant product, or article is to be exported from.

If it is determined that there is a plant pest or disease in the country of export which is associated with the plant, plant product, or article to be imported, and the pest or disease is exotic, a determination is made as to whether the plant, plant product, or article can be inspected, treated or otherwise handled to ensure that the plant, plant product, or article can enter the United States without risk of introducing or establishing the exotic plant pest or disease. If such treatments or procedures exist, they are imposed as conditions of entry and specified in the permit and regulations. If there are no conditions that can be imposed which are known to be effective to adequately ensure that the exotic plant pest or disease will not be introduced or established, the plant product or article is prohibited entry into the United States.

In addition to determining the conditions of entry for admissible plants, plant products, or other articles, USDA inspects incoming plants, plant products, and articles that may be carrying plant pests to determine if such shipments are, free of exotic plant pest and diseases and if all of the conditions of importation have been met. If exotic plant pests or diseases are found in the shipment, the shipment is treated if a treatment is available that will be effective in destroying the exotic plant pest or disease, or the shipment is reexported, or the plant and plant products are destroyed under supervision by USDA. In addition, certain propagative plants and plant products are required to be grown under post-entry quarantine on the premises of the importer for a specified time under specified conditions (7 CFR 319.37-7). This is done in order to detect certain exotic plant diseases which, because of their nature, could not be detected upon inspection at the port of entry at time of importation.

Further, USDA is authorized and directed to quarantine any State, Territory, District of the United States, or any portion thereof, when it is determined that such quarantine is necessary to prevent the spread of an exotic plant pest or disease (7 U.S.C. 161). Thereafter, it is unlawful to move any nursery stock or other plant, plant product, or other article capable of transmitting the exotic plant pest or disease, except in a manner or method or under conditions prescribed in USDA (7 U.S.C. 161).

Plant Pests

Section 15bb(a) of the Federal Plant Pest Act (7 U.S.C. 15bb(a)), in pertinent part, prohibits the movement of any plant pest from a foreign country into or through the United States or interstate unless such movement is authorized under a permit issued by USDA and is in accordance with such conditions as may be prescribed in the permit. USDA issues permits for the movement of plant pests for experimental or scientific purposes only.

Each request to issue a permit for the movement of plant pests is evaluated to determine what, if any, safeguards can be imposed which would allow the movement of the plant pest without risk that the plant pest would be disseminated. Permits for the movement of plant pests are denied when, in the opinion of USDA, such movement would involve a danger of dissemination of such pest (7 U.S.C. 15bb(b)).

In determining the safeguards necessary to prevent the dissemination of a plant pest, the following factors are considered:

- The plant pest species of the plant pest;
- The known distribution of the plant pest;
- The known or potential economic or environmental consequences should the plant pest become established;
- The colonization potential of the plant pest should there be an accidental release;
- The location of the proposed test facility in relation to the host plants of the plant pest;
- Alternative locations for conducting research;
How the particular race or strain of the plant pest to be studied interacts with the race or strain of the plant pest that might be found in the area where the test facility is located;

- Whether the value of the information to be obtained from the research outweighs the risk associated with plant pest dissemination;

- Whether alternate and less harmful plant pests could be utilized to obtain the desired research information;

- The mobility and host range of the pest; and

- Availability of effective irradiation procedures or materials in the event of an accidental escape of the pest.

Further, individuals receiving a permit are required to enter into an agreement with USDA stating that they will abide by all conditions imposed by USDA regarding testing, use, and disposal of the plant pest.

**Noxious Weeds**

In addition to regulating the movement of plants, plant products, and other articles, and plant pests to prevent the introduction or establishment of exotic plant pests, USDA has authority, pursuant to the Noxious Weed Act (7 USC 2801 through 2812), to regulate the importation or movement interstate of noxious weeds.

"Noxious weed" is defined by statute to mean any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is a foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health.

USDA regulates the importation of noxious weeds through a permit system similar to that established and discussed above for plant pests. Regulations in 7 CFR Part 361 designates plants as noxious weeds and establishes procedures for obtaining an import permit.

As previously discussed, the movement into or through the United States of plants, plant products, other articles, and plant pests is regulated for biotechnology and plant pests that might be found in the area where the test facility is located.

- **Nitrogen Fixing.** Bacteria of the genus *Rhizobium* have been found to be beneficial to legume plants because they make available to the legume plant an increased amount of nitrogen, important to the growth and development of the plant. Currently, experimentation is being to see if *Rhizobium* can be genetically altered so that it can be introduced in corn and certain other non-legume plants and thereby make available to these plants increased amounts of usable nitrogen. However, one negative effect of *Rhizobium* is that some strains have been shown to produce an undesirable yellowing on plants.

To the extent that strains of *Rhizobium* are commercially manufactured and distributed, their movement into or through the United States would be regulated by USDA as described above to prevent the movement of undesirable strains.

- **Ice nucleation negative bacteria.** The bacterium *Pseudomonas syringae*, currently used in ice nucleation research and product development, is a plant pathogen. This disease agent can cause leaf spotting, shoot wilting, and/or blossom drop in a wide spectrum of crops, including stone and pome fruits, citrus, varous grasses, lilac, string beans and lima beans. These bacteria are also residents on non-host plants, and, as such, exist on a wide spectrum of non host plants without causing disease. As residents on plants, they foster the development of ice crystals at 32° F. *Pseudomonas syringae* bacteria has been biotechnologically engineered so that it does not promote ice crystal formation until 27° F. or lower. These biotechnologically manufactured bacteria are known as ice nucleation negative bacteria. If non host plants are sprayed with ice nucleation negative bacteria early in the plants’ growth, the bacteria occupies sites that would have been occupied by naturally occurring ice nucleation positive bacteria without causing any of the harmful effects found on host plants. This procedure delays frost damage on sprayed plants until the temperature falls to 27° F., thus extending the growing season 2 to 4 weeks and increasing yields.

Since *Pseudomonas syringae* bacteria are plant pathogens, whether biotechnologically engineered or not, its movement into or through the United States would be regulated by USDA as described above.

- **Detection and Responses to Prevent Establishment of Plant Pests in the United States.** In addition to the authority discussed above regarding regulating the movement of plants, plant products, other articles capable of carrying plant pests, and plant pests to prevent the introduction and establishment of exotic plant pests in the United States, USDA also has authority, experience and elaborate procedures to detect, suppress, and eradicate exotic plant pests should they be introduced or already established in the United States.

USDA has authority to declare an extraordinary emergency and take any regulatory action affecting interstate commerce (7 U.S.C. 150 dd(b)). The declaration of an extraordinary emergency authorizes the Secretary of Agriculture, after determining that measures being taken by the State are inadequate, to (1) seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such a manner as the Secretary deems appropriate, any product or article of any character whatsoever, or means of conveyance which the Secretary has reason to believe is infested with, or contains an exotic plant pest; and (2) quarantine, treat, or apply other remedial measures to, in such a manner as the Secretary deems appropriate, any premises, including articles on such premises, which the Secretary has reason to believe are infested or infected by an exotic plant pest.

Pursuant to the Organic Act of September 21, 1944 (7 U.S.C. 147a), USDA is authorized to cooperate with States or political subdivisions thereof, farmers’ associations and similar organizations, and individuals to carry out operations or measures to detect, eradicate, suppress, control, or to prevent or retard the spread of plant pests. Utilizing this authority, USDA, in conjunction with its cooperators, has an extensive system for detecting and controlling exotic plant pests and diseases. Procedures are established for communicating, reporting, planning, and managing such exotic plant pests or diseases.

When any unusual or significant damage to a crop is observed, a determination is made whether the cause is due to an exotic plant pest. If a determination is made that an exotic plant pest is present in the United States, appropriate federal and state regulatory officials, industry, and the general public are alerted. USDA and its cooperators conduct nursery and field inspections, provide survey coordinators, conduct past surveys to assess the extent of the plant pest infestation, and provide electronic communication which is distributed among all offices involved in the survey and detection efforts.
Once a new plant pest or disease is identified, a search of the literature is conducted and data from specialists is compiled. Once the plant pest surveys are completed to determine whether a plant pest population is established, the extent of the population, and the degree of damage done or which would be done to agriculture, a plan is developed for managing the plant pest. This plan may include regulatory action, eradication, control, suppression, or other activities which may be implemented by USDA and its cooperators.

To the extent that biotechnology results in the development of a plant pest which is released into the environment, USDA would apply these established detection, suppression, or eradication procedures.

USDA is mandated by statute to impose the least drastic action adequate to prevent the dissemination of plant pests new to or not therefore known to be widely prevalent or distributed within and throughout the United States. This mandate would be applicable to the regulation of plants, plant products or articles capable of carrying plant pests, and plant pests developed through biotechnology.

Other Oversight Mechanisms

Any plant or associated microorganisms that are developed to the point of commercialization, and in which recombinant DNA techniques have been used, will be licensed, certified, or otherwise treated by USDA or state authorities in the same manner as organisms developed by conventional methodologies. A mechanism already exists for the development and evaluation of new crop varieties and associated microorganisms. This mechanism can easily accommodate biotechnology-derived organisms developed by both the public and private sectors. Relevant oversight mechanisms include, at the national level, the National Germplasm Advisory Board (NGAB), crop advisory committees of NGAB for each crop species, and the national voluntary registration system for new varieties under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) and Patent and Trademark Law (35 U.S.C. 1 et seq.). At the state level, oversight mechanisms include local breeders' release boards, state official and trademark variety testing, and state seed certification agencies.

Currently, the USDA utilizes the ARRC, in an advisory capacity, for scientific review of genetically engineered plants and associated microorganisms to be released for research, field tests, and commercial purposes. The ARRC provides scientific evaluation of the impact of the release of these plants into the agricultural research environment. The scientific advisory review uses the NIH guidelines as the basis for evaluation. The continued use of this mechanism depends on its long term applicability to regulatory oversight needs. Once the biotechnology regulatory needs become fully known, further consideration will be made concerning the ARRC's continuing participation in the impact review process.

D. Seeds

The Federal Seed Act ("FSA" 7 U.S.C. 1551 et seq.) defines USDA regulatory authority over the importation and interstate shipment of agricultural and vegetable seeds. It does not apply to the production or intrastate distribution of seeds or to seeds other than agricultural or vegetable seeds ("agricultural seeds") are grass, forage, and field crop seeds.

The FSA prohibits interstate shipment of seed that contains noxious weed seeds at levels in violation of the laws of the state of destination or in excess of levels allowed by the Secretary of Agriculture. This provision applies primarily to seed adulterated with noxious weed seed. In a few instances, however, states have determined that a particular variety of agricultural or vegetable seed is itself a noxious weed. In these instances, FSA prohibits the interstate shipment of the seed into those states. The FSA also allows the Secretary to prohibit the importation of agricultural and vegetable seed which is adulterated with noxious weed seed or which is unfit for seed purposes.

The authority granted to the Secretary by the FSA to prohibit the interstate shipment or importation of seeds which are found to be detrimental to the agricultural interests of the United States applies to seeds genetically engineered with the modern biotechnology to the same extent as any other seeds.

E. Meat and Poultry Products

The Food Safety and Inspection Service (FSIS) is responsible for assuring the safety, wholesomeness, and proper labeling of food products prepared from domestic livestock and poultry.

Although FSIS has no statutory provisions or regulations that address biotechnology directly, the laws and regulations under which the agency operates provide inspection authority to determine the safety and wholesomeness of animals that are slaughtered for human food. FSIS is required by statute to inspect cattle, sheep, swine, goats, equines, poultry, and food products prepared from them which are intended for use as human food to assure that they are wholesome, not adulterated, and properly labeled, marked, and packaged. Congress has, however, conferred the authority to conduct these inspections to FSIS under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA).

Inspection under these statutes is mandatory. The cost of inspection, except for overtime and holiday inspection, is required to be borne by the United States. Food, animals, and animal products other than those covered under the FMIA and PPIA may be inspected under a voluntary, reimbursable inspection program established under the Agricultural Marketing act of 1946.

Within the framework of food safety statutes, FSIS has developed regulations for research on experimental animals that are administered animal drugs, biologics, and pesticides (9 CFR 303, 303, 303, 303, and 303, 303, 303). These regulations state that no animal used in any research involving an experimental biological product, drug, or chemical shall be eligible for slaughter at an official establishment unless certain conditions are met. These conditions include any of several different ways of demonstrating that the use of such biological product, drug, or chemical will not result in the products of such animals being adulterated.

Products Subject to Review. FSIS anticipated that many food animals which are subject to the new techniques of modern biotechnology will not differ substantially in appearance, behavior, or general health from currently inspected cattle, sheep, swine, goats, equines, and poultry. Providing that such living products of biotechnology can be shown not to be adulterated, they would be subject to the same inspection procedures and regulations as traditionally inspected food animals.

FSIS is aware that some genetically engineered animals, such as chimeras and some hybrids, may differ substantially from animals that are currently inspected under the FMIA and PPIA. If such animals are ever intended for use as human food and are presented for inspection at an official establishment, a decision would have to be made as to whether such animals were covered under the FMIA or PPIA, and if not, whether FMIA or PPIA should be amended to require mandatory inspection of such animals and their products.

Implementation of Review Authority. FSIS's approach toward the safety
Summary

In summary, USDA anticipates that agriculture and forestry products developed by modern biotechnology will not differ fundamentally from conventional products. USDA believes that its existing regulatory framework, combined with the mandatory NIH Guidelines applicable to all research grants, is adequate and appropriate for regulating research, development, testing and evaluation, production, and application of these biotechnology products. The Department will, however, constantly reevaluate its regulatory position as the state of the art of biotechnology evolves. USDA will use a formal and logical process to ensure the continual integration of safety concepts and other principles for the evaluation of biotechnological processes and products in agriculture and forestry for licensing and granting of permits. Should any new processes or products be shown to require additional regulatory measures, USDA will amend its regulations or will request additional authority.

Scientific Advisory Mechanism

Regulatory decisions must be solidly based on the best available science. The expansion of commercial applications of biotechnology across many fields is a direct outgrowth of a continuously growing science base which draws upon the most fundamental understanding of molecular biology. Scientific assessment of risks associated with biotechnological innovation must draw heavily upon that sophisticated and changing body of knowledge. To supplement agency staff in this essential endeavor, the Cabinet Council Working Group recommends establishment of an independent scientific review mechanism, a two-tiered advisory structure consisting principally of distinguished scientists selected by each of five federal agencies: EPA, FDA, USDA, NIH, and NSF.

The National Institutes of Health Recombinant DNA Advisory Committee (RAC), established in 1974, has performed well in providing scientific assessment of recombinant DNA research proposals submitted from institutions that receive federal funding, and has reviewed on a voluntary basis experimental protocols submitted by industry. The current scientific review apparatus is, however, not designed to respond to all the scientific issues surrounding commercialization of biotechnology including the health and broad environmental effects of new commercial processes and products. Hence, the Working Group believes an expanded, coordinated scientific advisory structure is necessary to meet the increased and varied demands for scientific evaluation created by the needs of modern biotechnology. The objectives to be served by the proposed scientific advisory mechanism are:

- To provide expert advice on scientific issues related to the approval of biotechnology products and research applications;
- To provide a coordinating forum for addressing scientific problems, sharing information, and for consensus building;
- To promote consistency in the development of agencies’ review procedures and assessments;
- To promote continuing cooperation among Federal agencies on emerging scientific issues;
- To identify gaps in knowledge.

To accomplish these goals, a two-tiered structure composed of five agency-based scientific advisory committees under a coordinating parent board is proposed.

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**Diagram:**

```
+-----------------+      +-----------------+      +-----------------+      +-----------------+
| BIOTECHNOLOGY  |
| SCIENCE BOARD  |
|                 |
| EPA             |      | FDA             |      | USDA (bio-medical |
|                 |      |                 |      | research)        |
|                 |      |                 |      | NIH (biomedical |
|                 |      |                 |      | research)        |
|                 |      |                 |      | NSF (environmental |
|                 |      |                 |      | research)        |
```
The Agency-Based Scientific Advisory Committees

The scientific advisory committees will provide detailed scientific review of individual applications or issues that have been submitted to them by federal agencies. Five agencies (EPA, FDA, USDA, NIH, NSF) will sponsor these committees, which will be composed principally of members of the scientific community who possess demonstrated, recognized expertise in disciplines related to biotechnology. The NIH RAC will continue to serve as the scientific advisory committee for biomedical research, operating under procedures specified by the NIH Guidelines for Research Involving Recombinant DNA Molecules. The National Science Foundation will establish and operate a scientific advisory committee to examine the potential effects of environmentally related basic research in biotechnology. That committee will examine questions arising from projects supported by NSF and any other research sponsors requesting its assistance. The activities of the NSF committee will build on the strong ecology and ecosystems research program currently operated by NSF. The committees chartered by FDA, USDA, and EPA will address mainly commercial applications.

Each agency will promptly send to its advisory committee a summary of each application relating to recombinant RNA, recombinant DNA, or cell fusion submitted to it for funding or administrative review, regardless of whether the agency is requesting a scientific review. The advisory committees may decline to receive summaries, or to review, an individual proposal or class of proposals; for example, the NIH RAC has established guidelines which exempt from review some classes of experiments involving recombinant DNA molecules. Any agency of the federal government may request one or more of the scientific advisory committees to review its applications. The parent Biotechnology Science Board may also request that an agency direct its scientific advisory committee to review an application. Any applicant may submit to the head of the appropriate agency a request that its advisory committee review an application.

When a review is completed, the committee will submit its report to the agency that requested the review. It will also send a copy of the report, redacted to delete confidential business information and supplemented with such additional nonproprietary information as is necessary to appreciate the scientific significance of the report, to the parent board for review and comment.

All applications and committee reports containing proprietary information will be protected for confidentiality in accordance with the procedures of the individual agencies requesting scientific review. All procedures will be consistent with agency security procedures, conflict of interest and advisory committee rules, and time constraints.

The Biotechnology Science Board

The parent board will be chartered by the Department of Health and Human Services and will report to the Assistant Secretary for Health. The membership will include two members from each agency-based scientific advisory committee (described above). The board will:

- Receive from each agency a summary of each application relating to recombinant RNA, recombinant DNA, or cell fusion which is submitted to one of the agency-based scientific advisory committees and may make a request to the submitting agency that another committee or the parent board itself undertake a review of a specific proposal or class of proposals.
- Review committee reports, redacted and supplemented as stated above.
- Evaluate review procedures set by the agency-based scientific advisory committees.
- Conduct analyses of broad scientific issues involving rRNA, rDNA, or cell fusion and other processes as needed.
- Develop generic scientific guidelines that can be applied to similar, recurring applications.
- Provide a forum for public concerns.

The board will operate under the time and confidentiality constraints set by the individual agencies; all recommendations of the parent board will be advisor to the committee and/or agency requesting review; and its charter would be subject to renewal after two years.

Glossary of Terms

These definitions are meant to assist the reader. They are not to be considered binding legally on any Federal agency or non-Federal organization.

**Animal:** Multicellular organism composed of eukaryotic cells with ingestive nutrition and lacking rigid cell walls and photosynthetic ability; members include coelenterates, flatworms, molluscs, segmented worms, arthropods, echnodermns, and vertebrates.

**Antibody:** A protein (immunoglobin) produced by humans or higher animals in response to exposure to a specific antigen and characterized by specific reactivity with its complementary antigen. (See also monoclonal antibodies.)

**Antigen:** A substance, usually a protein or carbohydrate which, when introduced in the body of a human or higher animal, stimulates the production of an antibody that will react specifically with it.

**Antiserum:** Blood serum containing antibodies from animals that have been inoculated with an antigen. When administered to other animals or humans, antiserum produces passive immunity.

**Artificial selection:** Techniques imposed on populations of organisms to favor the growth or multiplication of a particular organism.

**Attenuated vaccine:** Whole, pathogenic organisms that are treated with chemical, radioactive, or other means to render them incapable of producing infection. Attenuated vaccines are injected into the host which then produces protective antibodies against the pathogen to protect against disease.

**Bacteria:** Any of a large group of microscopic or submicroscopic, prokaryotic organisms having round, rodlike, spiral or filamentous, unicellular or noncellular bodies that are often aggregated into colonies, are enclosed by a cell wall or membrane, and lack fully differentiated nuclei. Bacteria may exist as free living organisms in soil, water, organic matter, or as parasites in the live bodies of plants, animals and other microorganisms.

**Biological control agent:** Any living organism supplied to or introduced into the environment to control the population or biological activities of another life form.

**Biological product:** A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product used for the prevention, treatment or cure of diseases or injuries. (Same as biological drug.) [For FDA's regulatory definition, see 21 CFR 600.3(h); for USDA's, see 9 CFR 101.2(w)].

**Biological response modifier:** Generic term for hormones, neuroactive compounds, and immunoreactive compounds that act at the cellular level; many are possible targets for production with biotechnology.

**Biologics:** Vaccines, therapeutic sera, toxins, antitoxins, and analogous biological products used to induce immunity to infectious diseases or harmful substances of biological origin.
Biotechnology: Biotechnology is the application of biological systems and organisms to technical and industrial processes.

Cell conjugation: The one-way transfer of DNA between bacteria in cellular contact.

Cell fusion: Formation of a single hybrid cell with nucleus and cytoplasm from different cells.

Cell line: Cell that acquires the ability to multiply indefinitely in vitro.

Cell microencapsulation: Techniques using liposomes to entrap and then transfer nucleic acids into cells.

Cell microinjection: A technique in which nucleic acids are injected into a cell.

Chemical synthesis of nucleic acids: In vitro techniques used to synthesize nucleic acids from simpler molecules without mediation by organisms.

Clinical trial: One of the stages in the collection of data for approval of pharmaceuticals, where the drug is tested in humans. (For FDA’s regulatory definition, see 21 CFR 50.3(c) or 56.102(c).)

Clone: A group of genetically identical cells or organisms produced asexually from a common ancestor.

Coding sequence: The region of a gene (DNA) that encodes the amino acid sequence of a protein.

Diagnostic products: Products that recognize molecules associated with disease or other biologic conditions of man or animals and are used to diagnose these conditions.

Drug: Any chemical compound that may be administered to humans or animals as an aid in the treatment of disease. (For FDA’s regulatory definition, see 21 U.S.C. 321(s).)

Enzyme: Any of a group of catalytic proteins that are produced by living cells and that mediate or promote the chemical process of life without themselves being altered or destroyed. (E. coli): A species of bacteria that inhabits the intestinal tract of most vertebrates. Some strains are pathogenic to humans and animals. Many nonpathogenic strains are used experimentally as hosts for rDNA.

Eukaryote: A cell or organism with membrane-bound, structurally discrete nuclei and well developed cell organelles. Eukaryotes include plants, animals, fungi and protists. (Compare prokaryote.)

Exons: Any segment of an interrupted gene that is represented in the mature RNA product.

Fermentation: The decomposition of complex molecules under the influence of ferments or enzymes. Fermentation is used in various industrial processes for the manufacture of products such as alcohols, acids, and cheese by the action of yeasts, molds and bacteria.

Food additive (or food ingredient): A substance that becomes a component of food or affects the characteristics of food and, as such, is regulated by the U.S. Food and Drug Administration. (For FDA’s regulatory definition, see 21 U.S.C. 321(g).)

Fungus: Primarily multinucleate organism with eukaryotic nucleus in walled mycelium, absorptive nutrition, and lacking photo-synthetic ability.

Gene: The basic unit of heredity; an ordered sequence of nucleotide bases, comprising a segment of DNA. A gene contains the sequence of DNA that encodes one polypeptide chain (via RNA).

Gene pool: Total genetic information possessed by a population whose members naturally exchange genetic information.

Gene therapy: The insertion of a gene into a patient in a way that it corrects a genetic defect.

Gene transfer: The use of genetic or physical manipulation to introduce foreign genes into host cells to achieve desired characteristics in progeny.

Genetic engineering: A technology used to alter the hereditary apparatus of a living cell so that the cell can produce more or different chemicals or perform completely new functions. These altered cells are then used in industrial production.

Genetic material: DNA, genes, chromosomes which constitute an organism’s hereditary material; RNA in certain viruses.

Genome: The basic chromosome set of an organism or the sum total of its genes. The total complement of DNA of a cell carrying the blueprint for organization and function.

Genotype: The genetic constitution of an individual or group.

Germplasm: The total genetic variability available to an organism, represented by the pool of germ cells or seed.

Host-vector system: Compatible combinations of host (e.g., bacterium) and vector (e.g., plasmid) that allow stable introduction of foreign DNA into cells.

Hybrid: The offspring genetically dissimilar parents (e.g., a new variety of plant or animal that results from cross-breeding two different existing varieties, a cell derived from two different cultured cell lines that have fused).

Hybridoma: Product of fusion between myeloma cell (which divides continuously in culture and is “immortal”) and lymphocyte (antibody-producing cell); the resulting cell grows in culture and produces monoclonal antibodies.

Intron: A non-coding segment of the DNA of a gene that is removed from the transcribed RNA of cells in higher organisms before translation.

Medical device: An instrument or apparatus (including an in vitro reagent, such as MABS) intended for use in the diagnosis or treatment of a disease or other condition and which does not achieve its intended purpose through chemical action within or on the body. (For FDA’s regulatory definition, see 21 U.S.C. 321(b).)

Microorganism: An organism that is a fungus, prokaryote, protist, or virus.

Monoclonal antibodies (MABS): Homogeneous antibodies derived from a single clone of cells; MAbs recognize only one chemical structure. MAbs are useful in a variety of industrial and medical capabilities since they are easily produced in large quantities and have remarkable specificity.

Monoclonal antibody technology: The use of hybridomas that produce monoclonal antibodies for a variety of purposes. Hybridomas are maintained in cell culture or, on a large scale, as tumores (ascites) in mice.

Mutagenesis: The induction of mutation in the genetic materials of an organism; researchers may use physical or chemical means to cause mutations that improve the production capabilities of organisms.

Mutant: An organism with one or more DNA mutations, making its genetic function or structure different from that of a corresponding wild-type organism.

Mutation: A permanent inheritable change in a DNA sequence or chromosome.

New Drugs: Those not recognized by qualified experts as safe and effective. (For FDA’s regulatory definition, see 21 USC 321(p).)

Non-indigenous organism: Naturally occurring organisms placed in environments where they are not native.

Nucleic Acid: Linear polymer consisting of purines or pyrimidine bases bound to a ribose sugar (RNA) or a deoxyribose sugar (DNA) which is in turn bound to a phospho-sugar group.

Organism: Any biological entity, cellular or noncellular, with capacity for self-perpetuation and response to evolutionary forces: includes plants, animals, fungi, protists, prokaryotes, and viruses.

Peptide: A linear polymer of amino acids. A polymer of numerous amino acids is called a polypeptide. Polypeptides may be grouped by function, such as “neuroactive” polypeptides.
Pesticide: (a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and (b) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (FIFRA, section 2(u)).

Pharmaceuticals: Products intended for use in humans, as well as in vitro applications to humans, including drugs, vaccines, diagnostics, and biological response modifiers.

Phenotype: The appearance or other characteristics of an organism resulting from the interaction of its genetic constitution with the environment.

Physical containment: Procedures or structures designed to restrict the release of viable organisms, degree of containment varies.

Plant: Multicellular organism characterised by eukaryotic cells surrounded by rigid cell walls, photosynthetic ability, and embryonic development; members include mosses, liverworts, and vascular plants (including most terrestrial crop plants).

Prokaryotes: A cell or organism lacking membrane-bound, structurally discrete nucleus and organelles. Prokaryotes include bacteria and blue-green algae.

Protist: Unicellular, colonial, or multicellular eukaryotic organism lacking embryonic development; plant-like protists include euglena, dinoflagellates, diatoms, algae (except blue-green); animal-like protists include protozoa such as amoeba and paramecia.

Recombinant DNA: The hybrid DNA produced by joining pieces of DNA from different organisms or synthetic DNA together in vitro.

Recombinant DNA techniques: Those techniques used to develop recombinant DNA molecules.

Recombinant RNA: Hybrid RNA molecules constructed in vitro by joining RNA segments from different organisms (or synthetic RNA); techniques used to produce tRNA molecules.

Recombination: Formation of a new association of genes or DNA sequences from different parental origins.

Somatic cell: One of the cells composing parts of the body (e.g., tissues, organs) other than a germ cell.

Species: A taxonomic subdivision of a genus. A group of closely related, morphologically similar individuals which actually or potentially interbreed.

Spontaneous mutation: Mutation of unknown causes that occurs as a result of normal cellular operations or interactions with the environment and without direct human intervention.

Transduction: The transfer of bacterial genes from one bacterium to another by a bacteriophage particle.

Transfection: Transformation of eukaryotic and prokaryotic cells or uptake of free viral nucleic acids by cells with the subsequent formation of infective particles.

Transformation: The acquisition of new genetic markers by incorporation of added DNA.

Transgenic: An animal which had a foreign gene transplant is a transgenic animal.

Transposable element: Segment of DNA which moves from one location to another among and within chromosomes in possibly a predetermined fashion, causing genetic change; may be useful as a vector for manipulating DNA.

Undirected mutagenesis: Use of chemical or physical agents to change the sequence of nucleotides in a DNA or RNA in a random, nonspecific manner; examples of mutagens are ethyl methane sulfonate, nitrosoguanidine, and ultraviolet light.

Vector: DNA molecule used to introduce DNA into host cells. Vectors include plasmids, bacteriophage (virus) and other forms of DNA. A vector must be capable of replicating autonomously and must have cloning sites for the introduction of foreign DNA.

Virus: Any of large group of submicroscopic agents infecting plants, animals and bacteria and unable to reproduce outside the tissues of the host. A fully formed virus consists of nucleic acid (DNA or RNA) surrounded by a protein or protein and lipid coat. (For FDA's regulatory definition, see 21 CFR 403.3(h)(1)).

Sources


Dorland's Illustrated Medical Dictionary; 24th Edition.

U.S. Food and Drug Administration, U.S. Department of Agriculture, the Environmental Protection Agency.
Part III

Department of Energy

Economic Regulatory Administration

10 CFR Part 463
DEPARTMENT OF ENERGY

Economic Regulatory Administration
10 CFR Part 463
[Docket No. ERA-R-79-19]

Annual Reports From States and Non-Regulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and publication of Form ERA-166.

SUMMARY: Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain nonregulated utilities to submit to the Department of Energy (DOE) annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. Under the present DOE regulations (10 CFR Part 463), as amended, each of the reporting entities must file an annual report by February 28, 1985, covering the calendar year 1984 reporting period. All reports are to be made on Form ERA-166, a copy of which is appended to this Notice.

DATE: Reports are due by February 28, 1985.

ADDRESS: All completed Forms ERA-166 should be addressed to: Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, Form ERA-166, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Coal and Electricity Division, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Room GA-033, Washington, D.C. 20585, Phone (202) 252-1657

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1979 (44 FR 47254, August 13, 1979), DOE issued a rule (10 CFR Part 463) setting forth the manner in which State regulatory authorities and certain nonregulated gas and electric utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b), and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA).

On August 4, 1982 (47 FR 33579), DOE amended Part 463 by revising § 463.3 (a) and (c). The revised rule requires the reporting entities to file their annual reports on February 28 of each year. Each annual report must cover the immediately preceding calendar year (for example, the report due on February 28, 1985, shall cover the period January 1, 1984–December 31, 1984).

II. The Report Form

The Form ERA-166 is identical to the form published on January 3, 1984 (49 FR 5) except for date changes. It was approved by the Office of Management and Budget (OMB Control Number 1903-0060), and is being published today as an appendix to this Notice. It will provide reporting entities with the earliest opportunity to prepare their reports for the calendar year.


Robert L. Davies, Director, Coal and Electricity Division, Economic Regulatory Administration.

Appendix

Form ERA-166 is reproduced below.

BILLING CODE 6450-01-M
PURPA ANNUAL REPORT OF ELECTRIC AND GAS UTILITIES

This report is mandatory under the Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617) sections 116 and 309. Late filing or failure to report may result in criminal fines, civil penalties, and other sanctions as provided by law. See instructions regarding confidentiality.

Blue Section: Instructions

White Section: Questions to be Answered

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ERA-166 (11-84)
PURPA ANNUAL REPORT OF ELECTRIC AND GAS UTILITIES

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ERA-166 (11-84)
PURPA ANNUAL REPORT ON ELECTRIC AND GAS UTILITIES

SECTION I

PART I

INSTRUCTIONS

GENERAL INFORMATION

I. Purpose

The PURPA Annual Report on Electric and Gas Utilities, Form ERA-166, will be used by the Economic Regulatory Administration (ERA) for annual reporting to the President and Congress on the progress of State regulatory authorities and certain nonregulated electric and gas utilities in considering and making determinations with respect to the standards established by PURPA.

II. When to Submit

A. Submit this report no later than February 28, 1985.

B. This report covers the period of January 1, 1984 to December 31, 1984.

III. What and Where to Submit

A. Submit pages:

   27
   28
   30
   31
   35 (duplicated for each utility)
   36 (duplicated for each utility)
   43 (duplicated for each utility)

PURPA Annual Report on Electric and Gas Utilities
Coal and Electricity Division
Economic Regulatory Administration
Department of Energy, Forrestal Building
1000 Independence Avenue, S.W., Room GA-033
Washington, D.C. 20585

B. ERA reserves the right to request any supplementary information from the State regulatory authority or covered nonregulated utility as needed to fully understand the report.

C. ERA reserves the right to return any incorrectly completed reports. The official submission date will be assigned upon receipt of the correctly completed form.

For information concerning this report call
Steven Mintz
(202) 252-1657

IV. Who must Submit

A. Each State regulatory authority (with respect to each covered electric and gas utility for which it has rate making authority) and each covered nonregulated electric and gas utility must submit this report.
D. Covered Utilities

(1) Electric Utilities. The regulated and nonregulated electric utilities covered by this report are those whose total sales of electric energy (for purposes other than resale) exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediate preceding calendar year.

(2) Gas Utilities. The regulated and nonregulated utilities covered by this report are those whose total sales of natural gas (for purposes other than resale) exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediate preceding calendar year.

(3) Exclusion of Wholesale Sales. When determining eligibility, do not include regulating sales of electric energy or natural gas for purposes of resale.

(4) Published List. The list of utilities covered under PURPA for each reporting year. The inclusion or exclusion of any utility on the list does not affect the legal obligation to report by such utility or the responsible State regulatory authority under PURPA.

V. Provisions of Confidentiality of Information

The information contained on these forms may be (i) information which is exempt from disclosure to the public under the exemption for trade secrets and confidential commercial information specified in the Freedom of Information Act of 5 USC 552(b)(4)(FOIA) or (ii) prohibited from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing satisfactory to the Department concerning its confidential nature.

Therefore, respondents should state briefly and specifically (on an element-by-element basis, if possible), in a letter accompanying submission of the form, why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by their companies and the industry, and the type of competitive hardship that would result from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.
If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should be withheld from the public, DOE will assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new written justification need not be submitted each time the ERA-166 is submitted if:

a. views concerning information items identified as privileged or confidential have not changed; and

b. a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available, upon request, to the Congress or any Committee ofCongress, and to the General Accounting Office.
I. The PURPA Annual Report on Electric and Gas Utilities consists of 3 parts (these are included in Section II):

   Part I: General Information on the State Regulatory Authority or Covered Nonregulated Utility

   Part II: Questions Pertaining to Each of the Eleven Standards

   Part III: Standard Specific Questions

II. In Section II, complete Parts II and III for each electric utility listed in Part I. Complete only questions pertaining to the termination of service (TOS) and advertising (ADV) standards for each gas utility listed in Part I. Enter NA for questions that are not applicable to either the electric or gas utility, or state regulatory authority.

III. Enter the electric or gas utility name, as appropriate, in the top right corner of each returned answer sheet from Parts II and III. If the utility provides both services, submit two answer sheets for the utility.

IV. Information regarding the consideration process for each standard must, to the extent practical, be summarized from the written determination and orders issued.

V. To facilitate data collection for this form, utilities which are unable to respond to questions as of the year ending December 1984 may choose to respond on a 1984 fiscal year basis. However, utilities must be consistent throughout the form as to which option is chosen.
DEDFINITIONS

(A) Consumer—With respect to electric and gas consumers, any group of such consumers who have similar characteristics of electric or gas energy use.

(B) Consideration Process—With respect to any of the standards established by sections 111, 113, or 303 of PURPA, the set of appropriate procedures carried out by a State regulatory authority or nonregulated utility culminating in a decision to adopt or reject such standard or in a determination required by PURPA. (See Section I on regulations).

(C) Electric Consumer—Any person, State agency, or Federal agency to which electric energy is sold other than for purposes of resale.

(D) Electric Utility—Any person, State agency, or Federal agency that sells electric energy.

(E) Evidence—Any testimony, data, staff reports, technical analyses, briefs, or any other statements, documents, or information admitted into the record of the proceedings respecting the consideration of the standards.

(F) Federal Agency—An executive agency (as defined in section 102 of the United States Code).

(G) Gas Consumer—Any person, State agency, or Federal agency to which natural gas is sold other than for purposes of resale.

(H) Gas Utility—Any person, State agency, or Federal agency engaged in the local distribution of the sale of natural gas.

(I) Load Management Technique—Any technique (other than a time-of-day or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including (but not limited to): ripple, radio, or automatic control mechanisms; other types of interruptible electric service, energy storage devices; and load-limiting devices.

(J) Nonregulated Electric Utility—Any electric utility with respect to which no State regulatory agency has rate making authority.

(K) Nonregulated Gas Utility—Any gas utility with respect to which no State regulatory agency has rate making authority.

(L) Person—An individual, partnership, corporation, unincorporated association or any group, organization, or entity.

(M) Rate—(1) Any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of electric energy by an electric utility to an electric consumer or the sale of natural gas to a gas consumer;

(2) Any rule, regulation, or practice respecting any such rate, charge, or classification; and
(3) Any contract pertaining to the sale of electric energy to an electric consumer or the sale of natural gas to a gas consumer.

(R) Rate-making Authority—Authority to fix, modify, approve, or disapprove rates.

(Q) Sale—A transfer to a purchaser for consideration and, when used with respect to electric energy, includes any exchange of electric energy; or, when used with respect to natural gas, includes any exchange of natural gas.

(P) Standard—Refers to either the six rate-making standards or the five regulatory standards.

The six rate-making standards and their abbreviations as employed in this report includes:
- Cost-Of-Service standard ........... COS
- Declining Block Rate standard ....... DBR
- Time-Of-Day rate standard .......... TOD
- Seasonal Rate standard ............ SLR
- Interruptible rate standard ........ INT
- Load Management Techniques standard .... LMT

The five regulatory standards and their abbreviations as employed in this report include:
- Master-Metering standard ........ MMT
- Automatic Adjustment Clause standard .... AAC
- Information To Consumers standard ....... ITC
- Termination Of Service standard ....... TOS
- ADVertising standard ............. ADV

State—A State, the District of Columbia, and Puerto Rico.

State Agency—A State, political subdivision thereof, and any agency or instrumentality of either.

State Regulatory Authority—Any State agency that has rate-making authority with respect to: the sale of electric energy by an electric utility other than by such State agency (in the case of an electric utility with respect to which the TVA has rate-making authority, such term means the TVA); or the sale of gas by any gas utility (other than by such State agency).
Section 111(a-c) of PURPA requires consideration of six ratemaking standards, as follows:

"Sec. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.

(a) CONSIDERATION AND DETERMINATION - Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each non-regulated electric utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable state law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) PROCEDURAL REQUIREMENTS FOR CONSIDERATION AND DETERMINATION.

(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be:

(A) in writing

(b) based upon findings included in such determination and upon the evidence presented at the hearing, and

(c) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112(a), and in sections 121 and 122, the procedures for the consideration and determination referred to in sub-sections (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) IMPLEMENTATION.

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or non-regulated electric utility may, to the extent consistent with otherwise applicable State law:

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefore. Such statement of reasons shall be available to the public.

Sections 112, 121, and 122 of PURPA also establish requirements for this standard.

For the purpose of this report, for consistency with the joint committee managers report, and for consistency with terminology used in the regulatory community, the term "adopt" will be used throughout in the following questions as a synonym for the term "implement."
COST-OF-SERVICE STANDARD (COS)

REGULATIONS APPLICABLE TO THE COS STANDARD

Section 111(d)(1) of PURPA establishes the cost-of-service standard (COS) which states:

"Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115(a)."

Section 115(a) states:

"In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111(d)(1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated utility). Such methods shall to the maximum extent practicable:

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence attributable to differences in customer, demand, and energy components of costs. In prescribing such methods, such State regulatory authority and nonregulated electric utility shall...

FOR PURPOSES OF ANSWERING COS RELATED QUESTIONS

The cost-of-service standard (COS) has been:

A. Adopted by a State regulatory authority, when such authority has:

1. specified methods for a utility covered by the standard to use to determine cost of service, in accordance with section 115(a) above;

2. issued a written policy (or order) that a utility covered by the standard shall provide cost-of-service data or studies in accordance with these methods with each rate application or rate proceeding, or on a specified regular basis, or both; and

3. issued a written policy that rates charged by a utility covered by the standard for each consumer class shall be designed, to the maximum extent practicable, to reflect the costs of service to such class, as provided in section 111(d)(1).

B. Adopted by a nonregulated utility, when such nonregulated utility has:

1. specified methods that it will use for determining cost of service, in accordance with section 115(a) above;

(continued on next page)
utility shall take into account the extent to which total costs to an electric utility are likely to change if:

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers."

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<tr>
<th>FOR PURPOSES OF ANSWERING COS RELATED QUESTIONS (CONT)</th>
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<td>2. issued a written policy that it will develop cost-of-service data in accordance with these methods with each rate proceeding or on a specified regular basis, or both; and</td>
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<tr>
<td>3. issued a written policy that rates charged for each consumer class will be designed, to the maximum extent practicable, to reflect the costs of service to each class, as provided in section 111(d)(1).</td>
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<tr>
<td>C. Rejected by a state regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt.</td>
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REGULATIONS APPLICABLE TO THE DBR STANDARD

Section 111(d)(2) of PURPA establishes the declining block rates standard (DBR) which states:

"The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period."

FOR PURPOSES OF ANSWERING DBR RELATED QUESTIONS

The declining block rates standard (DBR) has been:

A. Adopted by a State regulatory authority, when such authority had issued written policies (or orders) providing:

1. that rates charged by utility covered by the standard shall not have declining block energy charges except to the extent that the utility has made the required demonstration (as defined in section 111(b)(2)); and

2. that the State regulatory authority will make a written determination of whether the utility has made the required demonstration.

B. Adopted by a nonregulated utility, when such nonregulated authority had issued a written policy (or order) that its rates shall not have declining block energy charges except to the extent that it has made in writing the required demonstration, as defined in section 111(b)(2).

C. Rejected by a State regulatory or nonregulated utility when it had issued written policies (or orders) declining to adopt.
TIME-OF-DAY RATES STANDARD (TOD)

REGULATIONS APPLICABLE TO THE TOD STANDARD

Section 111(d)(3) of PURPA establishes the time-of-day rates standard (TOD), which states:

"The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115(b)."

Section 115(b) states:

"In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each class of electric consumers if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates."

For the purpose of answering the questions in this schedule, the term "time-of-day rate" means a rate that is on a time-of-day basis and that reflects the costs of providing electric service at different times of the day to the consumer class to whom it is charged.

FOR PURPOSES OF ANSWERING TOD RELATED QUESTIONS

The time-of-day rates standard (TOD) has been:

A. Implemented by a State regulatory authority, when it had issued written policies for orders providing:
   1. that a utility covered by the standard shall charge time-of-day rates (as defined above) to each consumer class unless such rates are not cost-effective with respect to such class; and
   2. that the State regulatory authority will make a written determination of the cost-effectiveness of such rates in accordance with section 115(b).

B. Implemented by a nonregulated utility when it had issued written policies (or orders) providing:
   1. that it shall charge time-of-day rates (as defined above) to each consumer class unless such rates are not cost-effective with respect to such class; and
   2. that it will make a written determination of the cost-effectiveness of such rates in accordance with section 115(b).

C. Rejected by State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.
SEASONAL RATES STANDARD (SLR)

REGULATIONS APPLICABLE TO THE SLR STANDARD

Section 111(d)(4) of PURPA establishes the seasonal rates standard (SLR) which states:

"The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class for such utility."

For the purpose of answering the questions in this schedule, the term "seasonal rate" means a rate that varies by season and that reflects the costs of providing electric service at different seasons of the year to the consumer class to whom it is charged.

FOR PURPOSES OF ANSWERING SLR RELATED QUESTIONS

The seasonal rates standard (SLR) has been:

A. Adopted by a state regulatory authority when such authority has issued written policies (or orders) providing:

1. that it will determine the costs of providing electric service to each consumer class at different seasons of the year for each utility covered by the standard; and

2. that a utility covered by the standard shall charge seasonal rates (as defined above) to each consumer class to the extent that such costs vary seasonally.

B. Adopted by a nonregulated utility, when such nonregulated utility has issued written policies (or orders) providing:

1. that it will determine the costs of providing electric service to each consumer class at different seasons of the year; and

2. that it shall charge seasonal rates (as defined above) to each consumer class to the extent that such costs vary seasonally.

C. Rejected by a State regulatory authority or nonregulated utility when it had issued written policies (or orders) declining to adopt this standard.
Section 111(4)(5) of PURPA established the interruptible rates standard (INT), which states:

"Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member."

For the purpose of answering the questions in this schedule, the term "interruptible rate" means an interruptible rate that reflects the cost of providing interruptible service to the consumer class to whom it is charged.

**FOR PURPOSES OF ANSWERING INT RELATED QUESTIONS**

The interruptible rates standard (INT) has been:

**A.** Adopted by a state regulatory authority when such authority has issued written policies (or orders) providing:

1. that a utility covered by the standard shall offer each industrial and commercial electric consumer an interruptible rate; and

2. that the state regulatory authority will determine the costs of providing interruptible electric service to each consumer class that includes industrial or commercial consumers.

**B.** Adopted by a nonregulated utility, when such nonregulated utility has issued written policies (or orders) providing that it shall offer each industrial and commercial consumer an interruptible rate that reflects its determination of the costs of providing interruptible service to each consumer class that includes industrial or commercial consumers.

**C.** Rejected by a state regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.
LOAD MANAGEMENT TECHNIQUES STANDARD (LMT)

REGULATIONS APPLICABLE TO THE LMT STANDARD

Section 111(d)(6) of PURPA establishes the load management techniques standard (LMT) which states:

"Each electric utility shall offer to its electric consumers such load management techniques as the state regulatory authority (or the nonregulated electric utility) has determined will:

(A) be practicable and cost-effective, as determined under section 115(c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility."

Section 115(c) states:

"In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if:

1. such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(continued on next page)

FOR PURPOSES OF ANSWERING LMT RELATED QUESTIONS

The load management techniques standard (LMT) has been:

A. Adopted by a State regulatory authority, when such authority has issued written policies (or orders) providing:

1. that it will make a written determination of the cost-effectiveness of load management techniques relevant to each utility covered by the standard, in accordance with section 115(c);

2. that it will make a written determination of whether each technique will be practicable and cost-effective (as defined above), be reliable, and provide useful energy or capacity management advantages to the electric utility; and

3. that a utility covered by the standard shall offer its electric consumers those load management techniques that the state regulatory authority has determined will meet the criteria above (in A.2).

B. Adopted by a nonregulated utility, when such nonregulated utility had issued written policies (or orders) providing:

1. that it will make a written determination of the cost-effectiveness of relevant load management techniques, in accordance with section 115(c);

(Continued on next page)
(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique.

For the purpose of answering the questions in this schedule, the term "load management techniques" means any technique (other than a time-of-day rate or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including (but not limited to): ripple, radio or automatic control mechanisms; other types of interruptible electric service; energy storage devices; and load-limiting devices.

FOR PURPOSES OF ANSWERING LMT RELATED QUESTIONS (CONT)

2. that it will make a written determination of whether each such technique will be practicable and cost-effective (as defined above), be reliable, and provide useful energy or capacity management advantages to the electric utility; and

3. that it will offer its electric consumers those load management techniques that it has determined will meet the criteria above (in B.2.)

C. Rejected by State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.
Section 113(a) of PURPA requires public notice, hearing(s), and other actions respecting five regulatory standards established for electric utilities covered under Title I of PURPA, and Section 303(a) requires similar actions respecting two of these regulatory standards for gas utilities covered under Title III. With respect to the meter reading (MN), automatic adjustment clause (AAC), information to consumer (ITC), termination of service (TOS), and advertising (AW) standards, these sections establish the following requirements:

Section 113/303. ADOPTION OF CERTAIN STANDARDS.

(a) Adoption of Standards—Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric (gas) utility for which it has ratemaking authority), and each nonregulated electric (gas) utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall:

1) adopt the standards established by subsection (b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law, and

2) adopt the standard established by subsection (b)(4) if, and to the extent, such authority or nonregulated electric (gas) utility determines that such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 1123(307), the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory or nonregulated electric (gas) utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law.

Sections 121 and 122 of PURPA establish specific procedural requirements for this process with respect to electric utilities, and sections 121 and 305 establish the authority of the Secretary to intervene in appropriate proceedings for electric and gas utilities.

For the purposes of answering the questions on the advertising standard, the term "sufficient criteria" refers to the criteria established in section 113(a)(1), above: "appropriate to carry out the purposes of this title, otherwise appropriate, and consistent with otherwise applicable State law."

For the purposes of answering the questions on the termination of service standard the term "sufficient criteria" refers to the criteria established in section 113(a)(2), above: "appropriate and consistent with otherwise applicable State law."

1 That is, to encourage the conservation of energy supplied by electric and gas utilities; the optimization of the efficiency of use of facilities and resources by electric and gas utilities; and equitable rates to electric consumers.
REGULATIONS APPLICABLE TO THE MH STANDARD

Section 113(a)(1) states:

"Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(l) if:

(1) there is more than one unit in such building;

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building."

For the purpose of answering the questions in this schedule:

(A) The term "master metering" (MH) applies to all cases where:

(1) There is more than one unit in the building and the electric metering does not permit identification of the energy consumption in individual units; or

(Continued on next page)
### Regulations Applicable to the MM Standard (continued)

(2) More than one such unit is treated as a single account for billing purposes.

(3) The term "separate metering" applies to all other cases.

### For Purposes of Answering MM Related Questions (continued)

2. Issued a written policy that it will not provide master metered service to new buildings except to the extent determined appropriate under those methods and procedures specified above.

C. Rejected by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) stating that it has determined not to adopt the standard.

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AUTOMATIC ADJUSTMENT CLAUSES STANDARD (AAC)

REGULATIONS APPLICABLE TO THE AAC STANDARD

Section 13(b)(2) of PURPA establishes the automatic adjustment clauses standard (AAC), which states: "No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e)."

Section 115(a) states:

"(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if:

(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

(b) such clause is reviewed not less often than every two years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to each utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economics in those operations and purchases which affect the rates to which such clause applies.

(Continued on next page)
(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other item(s)).

(3) As used in this subsection and section 113(b), the term 'automatic adjustment clause' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.
REGULATIONS APPLICABLE TO THE ITC STANDARD

Section 113(b)(3) of PURPA establishes the information to consumers standard (ITC) which states: "Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f)."

Section 115(f) states:

"(1) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer:

(A) not later than sixty days after the date of commencement of service to such consumer or ninety days after the standard established by section 113(b)(3) is adopted with respect to such electric utility, whichever last occurs, and

(2) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year:

(Continued on next page)

FOR PURPOSES OF ANSWERING ITC RELATED QUESTIONS

The information to consumers standard (ITC) has been:

A. Adopted by a State regulatory authority when such authority has:

1. ordered that a utility covered by the standard shall transmit rate information to its electric consumers according to certain time requirements, in accordance with sections 115(f)(1) and (2) of PURPA; and

2. specified consumption data to be transmitted upon consumer request, and the conditions under which such data shall be considered to be not reasonably ascertainable by the utility, in accordance with section 115(f)(3) of PURPA.

B. Adopted by a nonregulated utility when such nonregulated utility has:

1. issued a written policy statement that it will transmit rate information to its electric consumers according to certain time requirements, in accordance with sections 115(f)(1) and (2) of PURPA; and

2. specified consumption data to be transmitted upon consumer request, and the conditions under which such data shall be considered to be not reasonably ascertainable by the utility, in accordance with section 115(f)(3) of PURPA.

(Continued on next page)
(A) A clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) An identification of any classes whose rates are not summarized. Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulatory electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption for degree-day adjusted consumption of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility).
TERMINATION OF SERVICE STANDARD (TOS)

REGULATIONS APPLICABLE TO THE TOS STANDARD

Section 113(b)(4) of PURPA establishes the termination of service standard (TOS) for electric utilities, and section 303(b)(1) establishes the same standard for gas utilities, stating: "No electric (gas) utility may terminate electric (natural gas) service to any electric (gas) consumer except pursuant to procedures described in section 115(g)/304(a)."

Section 115(g)/304(a) states:

"The procedures for termination of service referred to in section 113 (d)(4)/303(b)(1) are procedures prescribed by the State regulatory authority (with respect to electric (gas) utilities for which it has ratemaking authority) or by the nonregulated utility which provide that:

(1) no electric (gas) service to an electric (gas) consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to an electric (gas) consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric (gas) utility for which it has ratemaking authority) or nonregulated electric (gas) utility, and such consumer establishes that:

(Continued on next page)

FOR PURPOSES OF ANSWERING TOS RELATED QUESTIONS

The termination of service standard (TOS) has been:

A. Adopted by a State regulatory authority when such authority has:

1. prescribed specific procedures, in accordance with sections 115(g)/304(a) of PURPA;

2. ordered that a utility covered by the standard shall not terminate electric (gas) service to any electric (gas) consumer except pursuant to such procedures.

B. Adopted by a nonregulated utility when such nonregulated utility has:

1. prescribed specific procedures, in accordance with sections 115(g)/304(a) of PURPA;

2. issued a written policy that it shall not terminate electric (gas) service to any electric (gas) consumer except pursuant to such procedures.

C. Rejected by a State regulatory authority or nonregulated utility when it had issued written policies (or orders) stating that it has determined not to adopt the standard.
REGULATIONS APPLICABLE TO THE TOS STANDARD (CONTINUED)

(a) he is unable to pay for such service in accordance with the requirements of the utility’s billing, or

(b) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.”
ADVERTISING STANDARD (ADV)

REGULATIONS APPLICABLE TO THE ADV STANDARD

Section 113(b)(5) of PURPA establishes the advertising standard (ADV) for electric utilities, and section 303(b)(2) establishes the same standard for gas utilities, stating: "No electric (gas) utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h)/304(b)."

Sections 115(h)/304(b) state:

"(1) For purposes of this section and section 113(b)(5)/303(b)(2):

(A) The term "advertising" means the commercial use, by an electric (gas) utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric (gas) consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(Continued on next page)

FOR THE PURPOSES OF ANSWERING ADV RELATED QUESTIONS

The advertising standard (ADV) has been:

A. Adopted by a State regulatory authority when such authority has issued a written policy (or order) that it will disallow (for ratemaking purposes) any direct or indirect expenditure by a utility covered by the standard for promotional or political advertising, as defined in accordance with section 115(h)/304(b).

B. Adopted by a nonregulated utility when such nonregulated utility had issued a written policy that it will not recover from any person other than the stockholders (or other owners) any direct or indirect expenditures for promotional or political advertising, as defined in accordance with section 115(h)/304(b).

C. Rejected by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) stating that it has determined not to adopt the standard.
(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric (gas) utility or the selection or installation of an appliance or equipment designed to use such utility's service.

(2) For the purposes of this subsection and section 113(b)(5) / 303(b)(2), the terms "political advertising" and "promotional advertising" do not include:

(A) advertising which informs electric (natural gas) consumers how they can conserve energy (natural gas) or can reduce peak demand for electric (natural gas) energy.

(B) advertising required by law or regulation, including advertising required under part I of Title II of the National Energy Conservation Policy Act.

(C) advertising regarding service interruptions, safety measures, or emergency conditions.

(D) advertising concerning employment opportunities with such utility.

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.
### IDENTIFICATION DATA

1.1 State Regulatory Authority (or Covered Nonregulated Utility)

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1.2 Designated Point(s) of Contact for the Electric Utility Portion of this Report:

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1.3 Designated Point(s) of Contact for the Gas Utility Portion of this Report: (If same as 1.2, enter "SAME".)

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### CERTIFICATION

I certify that I am the chairman of this State regulatory authority or the chief executive officer of this nonregulated utility or another commissioner or officer authorized to file an official report on behalf of this authority or utility. I further certify that the data presented in this report (Section II, Parts I through III and attachments) are true, accurate, and complete to the best of my knowledge, and I hereby authorize its release as an official report on behalf of this authority or utility for the purpose of complying with sections 116 and 309 of the Public Utility Regulatory Policies Act (P.L. 95-617).

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<th>Field</th>
<th>Value</th>
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<tbody>
<tr>
<td>Name</td>
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<td>Title</td>
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</table>

1.6 Signature

1.7 Date

10 USC 1001 makes it a crime for any person knowingly and willfully to make to any Agency or Department of the United States any false, fictitious, or fraudulent statements as to any matter within his or her jurisdiction.

[THIS SHEET IS TO BE RETURNED]
FOR ANSWERING 1.8 to 1.10:

Which of the following steps have you taken regarding the requirements of sections 121 and 122 of PURPA?

(If your consideration process for all of the standards was completed before November 9, 1978, check NA. Otherwise, check Yes or No.)

1.8 Established a written policy or order, consistent with section 121 of PURPA, that covers the consideration proceedings and provides for intervention, participation, and access to information.

☐ Yes ☐ No ☐ NA

1.9 Adopted a procedure for compensation to certain intervenors that is consistent with section 122(a)(2) of PURPA.

☐ Yes ☐ No ☐ NA

1.10 Provided an alternative means for providing adequate compensation to certain intervenors that is consistent with section 122(b) of PURPA.

☐ Yes ☐ No ☐ NA

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[THIS SHEET IS TO BE RETURNED]

-28-
INSTRUCTIONS

I. On pages 30 and 31, column "a", list the covered utilities for which you have ratemaking authority; if none, write "NONE". (For nonregulated utilities, list name.)

   For Electric Utilities: Answer question 1.11 on page 30.
   For Gas Utilities: Answer question 1.12 on page 31.

II. In the case of utilities that sell both electricity and gas (for regulated and nonregulated utilities), list the utility twice; once in 1.11 and once in 1.12.

III. List utilities in alphabetical order and place an (I) for investor-owned, a (P) for publicly owned, or a (C) for cooperatively-owned after the utility name.

IV. In the space provided next to the utility name, indicate the average number of retail customers, for the year ending December 1984 by: residential class, commercial and industrial class, and all others.

V. In the space provided next to the utility name, indicate total consumption by retail consumers for the year ending December 1984, in GPHR or HHCW by: residential class, commercial and industrial class, and all others. If desired, the utility may answer on a 1984 calendar year or 1984 fiscal year basis. Please see General Instructions on page 4 for more information on this option.

VI. If more space is required, duplicate the form provided and renumber the lines accordingly (for example, 31 will become 316 and 31 will become 31G).

ERA-166 (11-84)
### Identification of Utilities (continued)

<table>
<thead>
<tr>
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<th>Number of Retail Customers</th>
<th>Consumption (GWh)</th>
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<td>(E) Commercial &amp;</td>
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<td>(C) Commercial &amp; Industrial</td>
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ERA-166 (11-84)
### Identification of Utilities (Continued)

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<td>(P)</td>
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(This sheet is to be returned)

ERA-166 (11-84)
PURPA ANNUAL REPORT ON ELECTRIC AND GAS UTILITIES
SECTION II
PART II
Questions Pertaining to each of
the Eleven Standards

INSTRUCTIONS

I. (1) **For Electric Utilities:** Duplicate the answer sheet on page 35. Prepare one sheet for each electric utility named on page 30.

   (2) **For Gas Utilities:** Duplicate the answer sheet on page 36. Prepare one sheet for each gas utility named on page 31.

II. Enter the utility name in the space provided on the answer sheet. Prepare one answer sheet per utility. For utilities providing both electricity and gas service, you will have one answer sheet for the electric portion of the utility's business and one for the gas portion of the utility's business.

III. (1) **For Electric Utilities:** Answer all questions for each of the eleven standards.

   (2) **For Gas Utilities:** Answer all questions for only the TOS and ADV standards.

Place all responses on the answer sheets under the abbreviation for that standard and corresponding to the question number.

IV. If the answer box on the answer sheet is shaded, do not answer that question. If instructed to skip a question, leave that answer box blank.

V. Include comments pertaining to a specific utility on the back of that utility's answer sheet. For example, if a ratemaking standard has been adopted, but is still being phased-in, a comment to that effect would be appreciated. General comments are encouraged and should be included on a separate sheet (with appropriate identification).

ERA-166 (11-84)
QUESTION 2.1

2.1 What was the status of the STANDARD as of December 31, 1984?

STATUS CODES

0 - Consideration process has not begun

1 - Hearing has been scheduled or review process has begun

2 - Consideration process has started but hearing has not been completed

3 - Hearing has been completed

4 - Official determination has been made regarding whether or not it is appropriate to adopt this standard to encourage conservation of electric energy, utility efficiency and equitable rates to consumers, but decision regarding adoption or rejection of this standard has not been made for this utility

5 - Standard has been adopted (i.e., put into effect) as defined in the PURPA regulations (pages 7-26)

6 - Standard has been rejected as defined in the PURPA regulations (pages 7-26)

7 - State law has mandated standard

8 - State law has prohibited standard

BEFORE CONTINUING TO ANSWER
THIS REPORT READ THE FOLLOWING:

For each utility whose status code in Question 2.1 is:

STATUS CODES

0, 1, 2, 3, 8 - Do not complete remaining questions in Parts II or III.

5 - Complete all questions in Parts II and III.

4 or 6 - Answer only questions 2.2 through 2.5 in Part II. Answer all questions in Part III.

7 - Answer only questions 2.6 through 2.12 in Part II and all questions in Part III.
QUESTION 2.2

2.2 Have your proceedings and actions conformed to the requirements of Title I and/or Title III of PURPA for the STANDARD, as defined in the regulations applicable to each standard detailed in pages 7 through 26.

[Enter: Y (Yes) N (No)]

QUESTIONS 2.3 through 2.5

In your consideration process, have you made written determination that it is (or is not) appropriate to adopt the STANDARD to carry out:

[Enter: Y (Yes it is appropriate); N (No it is not appropriate); O (Other, no written determination was made or no conclusions resulted from consideration process).]

2.3 Conservation of energy?
2.4 Optimization of efficiency?
2.5 Equitable rates?

QUESTION 2.6

2.6 Are all consumers in all classes covered by the STANDARD and billed under rate schedules which conform to the adopted or mandated STANDARD?

[Enter: Y (Yes), if Yes, Skip to Part III. N (No), if No, answer 2.7 through 2.12.]

RA-166 (11-84)
<table>
<thead>
<tr>
<th>QUESTIONS</th>
<th>(a)</th>
<th>(b)</th>
<th>(c)</th>
<th>(d)</th>
<th>(e)</th>
<th>(f)</th>
<th>(g)</th>
<th>(h)</th>
<th>(i)</th>
<th>(j)</th>
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COS: Cost of service standard  
DBR: Declining block rate standard  
TOD: Time of day rates standard  
SLR: Seasonal rates standard  
INT: Interruptible rate standard  
LMT: Load management technique standard  
MM: Master metering standard  
AAC: Automatic adjustment clause standard  
ITC: Information to consumers standard  
TOS: Termination of service standard  
ADV: Advertising standard

[THIS SHEET IS TO BE DUPLICATED AND RETURNED]

ERA-166 (11-84)
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</table>

**TOS**: Termination of Service Standard  
**ADV**: Advertising Standard

**THIS SHEET IS TO BE DUPLICATED AND RETURNED**
INSTRUCTIONS

I. Prepare duplicates of the answer sheet on page 43, as necessary, for each gas utility and electric utility named on pages 30 and 31.

II. Enter the name of each utility in the space provided on the answer sheet. If the utility provides both electric and gas services, prepare two answer sheets for the utility, one for each service.

III. Answer questions 3.1 through 3.34 for each electric utility. When answering questions for a gas utility, answer only questions 3.29 through 3.34.

IV. Include comments pertaining to a specific utility on the back of that utility's answer sheet. General comments are encouraged and should be included on a separate sheet.
QUESTIONS 3.1 through 3.5: COS Standard

If you have not made a determination on the Cost of Service standard, go on to question 3.6.

For Questions 3.1 through 3.5:

- If an official determination has been made concerning the Cost of Service standard, if the standard has been adopted or if it has been mandated (status codes 4, 5, or 7 for question 2.1), does your standard address the methods described in 3.1 through 3.5?

[Enter: R (Methods are required by standard)
   A (Methods are allowed by standard)
   F (Methods are forbidden by standard)
   NC (Methods are not covered by standard)]

- OR,
  If you have REJECTED the Cost of Service standard (status code 6 for question 2.1), had you considered using the methods described in 3.1 through 3.5?

[Enter: Y (Methods were considered)
   N (Methods were not considered)]

3.1 Methods that permit identification of customer demand and energy-related cost of service for each class of customers.

3.2 Methods that take into account the change in total costs resulting from adding capacity to meet peak demand.

3.3 Methods that take into account the change in total costs resulting from delivery of additional kWh?

3.4 Methods that permit the use of embedded cost data in setting rates?

3.5 Methods that permit the use of marginal cost data in setting rates?

QUESTIONS 3.6 through 3.7: DNR Standard

- If a determination has not been made concerning the Declining Block Rate standard, go on to question 3.8.

- If a determination has been made concerning the Declining Block Rate or if it has been mandated by state law (status codes 4, 5, or 7 for Question 2.1), does your declining block rate standard, as adopted, address the following methods?

[Enter: R (Required by standard)
   A (Allowed by standard)
   F (Forbidden by standard)
   NC (Not covered (addressed) by standard)
   NA (Not applicable, standard not adopted)]

3.6 The use of methods for determining the costs attributable to the energy component of a declining block rate?

3.7 Energy (i.e. kWh) charges that decline only to the extent that energy-related costs of service decline with increases in consumption?
QUESTIONS 3.8 through 3.11: TOD Standard

- If a determination has not been made concerning the Time-of-Day rate standard, go on to question 3.12.

For Questions 3.8 through 3.11:

- If an official determination has been made concerning the Time-of-Day rate standard, if the standard has been adopted, or if it has been mandated (status codes 4, 5, or 7 for Question 2.1), does your standard address the methods described in 3.8 through 3.11?

[Enter: A (Methods are allowed by standard) F (Methods are forbidden by standard) NC (Methods are not covered by standard)]

- OR,

If you have REJECTED the Time-of-Day rate standard, had you considered using the methods described in 3.8 through 3.11?

[Enter: Y (Methods were considered) M (Methods were not considered)]

3.8 Methods for determining costs of providing electric service at different times of day?

3.9 Methods that take into account the change in total costs resulting from adding capacity to meet peak demand?

3.10 Methods that take into account the change in total costs resulting from delivery of additional kWh?

3.11 Methods that permit the determination of the cost-effectiveness of time-of-day rates?
For rate schedules in effect as of December 31, 1984 and that complied with your interruptible rates standard:

3.15 How many commercial and industrial consumers were eligible to be billed under interruptible rates? Report the average number of consumers for the month ending December 1984.

3.16 How many commercial and industrial consumers were actually billed under interruptible rates? Report the average number of consumers for the month ending December 1984.

3.17 What is the number of megawatts of interruptible load contracted for from such interruptible consumers? Report as of December 31, 1984.
3.19 Methods that permit a determination of a likely reduction in maximum kilowatt demand on the electric utility from utilization of available load management techniques?

3.20 Methods that permit a determination of likely long run cost savings to the utility of reductions in maximum KW demand?

3.21 Methods that permit a determination of whether an available technique is practicable, cost-effective, reliable, and provides useful energy or capacity management advantages to the electric utility?

3.22 The occupant of each unit having control over a portion of the electric energy used in such unit?

3.23 The long-run benefits to the electric consumer in the building exceeding the costs of purchasing and installing separate meters?

---

**QUESTIONS 3.24 through 3.25: AAC Standard**

- If a determination has not been made concerning the Automatic Adjustment Clause standard, go on to 3.26.

- If a determination has been made concerning the Automatic Adjustment Clause or if it has been mandated by state law, does the Automatic Adjustment Clauses standard, as adopted, require the following or, if the standard was not adopted, did you consider the following in your hearing process:

  [Enter: Y (Yes) H (No)]

3.24 Evidentiary hearings to be held not less often than every 4 years to determine whether each clause covered by the standard provides incentives for efficient use of resources by the electric utility?

3.25 Is your review of each covered clause not less often than every 2 years to ensure maximum economies in operations and purchases that affect automatic adjustment clause rates?

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**QUESTIONS 3.26 through 3.28: ITC Standard**

- If a determination has not been made concerning the Information to Consumers standard, go on to 3.29.

- If an official determination has been made or if the standard was mandated by state law, does the Information to Consumers standard, as adopted, require the following:

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ERA-166 (11-84)
PART III

QUESTIONS (CONTINUED)

[Enters Y (Yes)]
N (No)
NA (Not applicable, standard not adopted)]

3.26 Transmittal of information to consumers of existing rate schedule and any rate schedule applied for as specified in PURPA?

3.27 Transmittal of a summary of the existing rate schedules applicable to each of the major consumer classes for which there is a separate rate to consumers, not less frequently than once each year?

3.30 Prior notice to include third party notification, or other special procedures for notifying elderly and handicapped consumers?

3.31 A notice of rights and remedies to be provided to the consumer with all termination notices?

3.32 Service not to be terminated when:
   (a) Consumer's health is in danger and;
   (b) he is unable to pay in accordance with the utility's billing practices and;
   (c) he has established that he can only afford to pay in installments?

QUESTIONS 3.33 through 3.34: ADW Standard

- Answer questions 3.33 and 3.34 if an official determination has been made concerning the Advertising Standard or if it has been mandated by state law.

[Enters Y (Yes)]
N (No)
NA (Not applicable, standard not adopted)]

3.33 Definitions of political and promotional advertising which conform to those given in sections 115(h)(1) and (2) or 304(b)(1) and (2) of PURPA (see pages 25 and 26)?

3.34 Prohibitions on the recovery of political and promotional advertising expenses from rate-payers or any persons other than shareholders (or other owners)?

QUESTIONS 3.29 through 3.32: TOS Standard

- If a determination has not been made concerning the Termination of Service standard, go on to question 3.33.

- If an official determination has been made concerning the Termination of Service standard or if it is mandated by state law, does the Termination of Service standard, as adopted, require the following:

[Enters Y (Yes)]
N (No)
NA (Not applicable, standard not adopted)]

3.29 Prior notice of termination?

ERA-166 (11-84)
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**COD:** Cost of service standard
**SLR:** Seasonal rates standard
**INT:** Interruptible rate standard
**MM:** Master metering standard
**TOD:** Time of day rates standard
**LNT:** Load management technique standard
**ITC:** Information to consumers standard
**ADV:** Advertising standard

(This sheet is to be duplicated and returned)
DEPARTMENT OF ENERGY
Economic Regulatory Administration
[Docket No. ERA-R-79-43B]


AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: Sections 302(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act (NECPA) require the Secretary of Energy to publish a list before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1985. Each State regulatory authority is required, pursuant to sections 302(c) and 301(d) of PURPA and section 211(b) of NECPA, to notify the Secretary of Energy of each utility on the list over which it has ratemaking authority. Five State regulatory authorities are requested on the accuracy of the list published today.

DATE: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 14, 1985.

ADDRESS: Notifications and written comments should be forwarded to: Department of Energy, Coal and Electrically Division, 1000 Independence Avenue, SW., (Room GA-633), Docket No. ERA-R-79-43B, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room GA-033, Washington, D.C. 20585.

SUPPLEMENTAL INFORMATION:

Background

Pursuant to sections 302(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 et seq. (42 U.S.C. 2601 et seq.), and section 211(b) of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3296 et seq. (42 U.S.C. 2601 et seq.), hereinafter referred to as the "Acts," the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1985. Each State regulatory authority is required by the above cited Acts to notify the Secretary of Energy of each utility on the list over which it has ratemaking authority. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Acts.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, either of which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency) and in the case of a utility which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) requires the Secretary of Energy to publish a list before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, State agency or Federal agency, which sells electric energy. An electric utility is covered for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1985 if it exceeded the threshold in 1976, 1977, 1978, 1979, 1980, 1981, 1982, or 1983.

Title II, Part I, of NECPA, addresses residential conservation programs, and Title VII of NECPA, enacted as part of the Energy Security Act, Pub. L. 95-294, 94 Stat. 611 et seq. (42 U.S.C. 8701 et seq.), addresses commercial building and multi-family dwelling conservation programs. Section 211(b) contains a requirement, similar to that of PURPA, that the Secretary of Energy publish a list of electric and gas utilities to which Titles II and VII apply. The NECPA requirements for coverage of electric utilities and gas utilities differ from the PURPA requirements in only three respects:

(1) The threshold for electric utilities is 750 million kilowatt-hours for purposes other than resale;

(2) A utility is covered for any calendar year if it exceeded the threshold during the second preceding calendar year. A utility is covered in 1985 if it exceeded the threshold in 1983; and

(3) Only utilities which have residential sales are covered by Title II and only utilities which have sales to commercial buildings or multi-family dwellings are covered by Title VII.

In compiling the list published today, DOE revised the 1984 list (49 FR 1103, January 19, 1984), upon the assumption that all entities included on the 1984 list are properly included on the 1985 list unless DOE has information to the contrary. In doing this, DOE took into account information received from the Rural Electrification Agency, or included in public documents, regarding entities which exceeded the PURPA and NECPA thresholds for the first time in 1983. DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this notice. DOE will, after consideration of any comments and other information available to DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 14, 1985, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in
January regulatory authorities (49 FR 1108) requiring each State information provided to explanatory notes, is based on not regulated covered utilities in the State which are separately identifies, NECPA. regulatory authority under PURPA and those of the responsible State lists does not affect its legal obligations or exclusion of any utility on or from the requirements. In both appendices, the list of electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives. The changes to the 1984 list of electric and gas utilities are as follows: Additions *Berkeley Electric Cooperative Incorporated Commonwealth Gas Services, Incorporated *Dakota Electric Association *Douglas County Electric Membership Corporation *Rutherford Electric Membership Corporation Modifications CHANGE—Dallas Power and Light Company, Texas Electric Service Company, and Texas Power and Light Company to—Texas Utilities Electric Company (merger) CHANGE—Minnesota Gas Company to—Minneapolis, Inc. CHANGE—Missouri Edison Company, Missouri Power and Light Company, and Missouri Utilities Company to—Union Electric Company (merger) CHANGE—New Mexico Electric Service Company to—Southwestern Public Service Company (merger) CHANGE—Prince William Electric Cooperative to—Northern Virginia Electric Cooperative Astensk (*) Removed Jackson Electric Membership Corporation (GA)

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission: Electric Utilities


Electric Utilities Investor-Owned: Alabama Power Company The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission: Electric Utilities


the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 14, 1985, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by DOE will be available for public inspection in the Freedom of Information Reading Room, Room 1E-199, 1000 Independence Avenue, SW., Washington, D.C. 20585 between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

III. List of Electric Utilities and Gas Utilities

DOE is publishing in Appendix A and Appendix B, two different tabulations of the list of utilities which meet both PURPA and NECPA coverage requirements. In both appendices, the listed utilities not covered by NECPA are noted. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA and NECPA.

Appendix A is a tabulation of utilities which separately identifies, by State, and each State regulatory authority, the covered utilities if it regulates, and other covered utilities in the State which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to DOE by State regulatory authorities in response to the January 9, 1984 Federal Register Notice (49 FR 1108) requiring each State regulatory authority to notify DOE of each utility on the list over which it has ratemaking authority, comments received with respect to that notice, and information subsequently available to DOE.

The utilities classified in Appendix A as not regulated by the State regulatory authority may in fact be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1984 list of electric and gas utilities are as follows:

Additions

*Berkeley Electric Cooperative Incorporated
Commonwealth Gas Services, Incorporated
*Dakota Electric Association
*Douglas County Electric Membership Corporation
*Rutherford Electric Membership Corporation

Modifications

CHANGE—Dallas Power and Light Company, Texas Electric Service Company, and Texas Power and Light Company to—Texas Utilities Electric Company (merger)
CHANGE—Minnesota Gas Company to—Minneapolis, Inc.
CHANGE—Missouri Edison Company, Missouri Power and Light Company, and Missouri Utilities Company to—Union Electric Company (merger)
CHANGE—New Mexico Electric Service Company to—Southwestern Public Service Company (merger)
CHANGE—Prince William Electric Cooperative to—Northern Virginia Electric Cooperative

Astensk (*) Removed
Jackson Electric Membership Corporation (GA)

Erroneously Listed in 1984 List

Corning Natural Gas Corporation (NY)
Equitable Gas Company (KY)
Inland Gas Company (KY)
Midwest Natural Gas Corporation (IN)

North Central Public Service Company (IA,MN)


Issued in Washington, D.C., on December 20, 1984.

Robert L. Davies,
Director, Coal and Electricity Division, Economic Regulatory Administration.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1979, 1977, 1978, 1979, 1980, 1981, 1982 or 1983. All except those marked (*) are covered by PURPA Title III and NECPA Titles II and VII Utilities marked (*) are not covered by NECPA Titles II and VII because they either do not exceed the NECPA threshold of 10 billion cubic feet in 1983 for purposes other than resale, or do not have residential or commercial sales.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1978, 1977, 1976, 1979, 1980, 1981, 1982 or 1983. All except those marked (*) are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1983 for purposes other than resale, or do not have residential or commercial sales.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:

Alabama Gas Corporation
*Alabama-Tennessee Natural Gas Company
Mobile Gas Service Corporation
Northwest Alabama Gas Dist.

Electric Utilities

Investor-Owned:

Alabama Power Company
The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

*Publicly-Owned:

Decatur Electric Department
*Dothan Electric Department
*Florence Electric Department
Huntsville Utilities

Rural Electric Cooperatives:

*Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:

Enstar Natural Gas Company
Electric Utilities
Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
  *Anchorage Municipal Light & Power Department
State: Arizona
  Regulatory Authority: Arizona Corporation Commission.
Gas Utilities
Investor-Owned:
  Arizona Public Service Company
  Southern Union Gas Company
  Southwest Gas Corporation
Electric Utilities
Investor-Owned:
  Arizona Public Service Company
  Tucson Electric Power Company
The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:
  Salt River Project Agricultural Improvement and Power District
  *Trono Electric Cooperative, Inc.
State: Arkansas
  Regulatory Authority: Arkansas Public Service Commission.
Gas Utilities
Investor-Owned:
  Arkansas-Louisiana Gas Company
  Arkansas-Oklahoma Gas Corporation
  Arkansas Western Gas Company
  Associated Natural Gas Company
Electric Utilities
Investor-Owned:
  Arkansas Power and Light Company
  Empire District Electric Company
  Oklahoma Gas and Electric Company
  Southwestern Electric Power Company
Rural Electric Cooperatives:
  *First Electric Cooperative Corporation
  The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:
  Publicly-Owned:
    *North Little Rock Electric Department
State: California
  Regulatory Authority: California Public Utilities Commission.
Gas Utilities
Investor-Owned:
  Pacific Gas and Electric Company
  Southern California Edison Company
  The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:
  Gas Utilities
  Publicly-Owned:
    *Anheuser Public Utilities Department
    Burbank Public Service Department
    *Glendale Public Service Department
    Imperial Irrigation District
    Los Angeles Department of Water and Power
    Modesto Irrigation District
    Palo Alto Electric Utility
    Pasadena Water and Power Department
    Riverside Public Utilities
    Sacramento Municipal Utility District
    Santa Clara Electric Department
    *Turlock Irrigation District
    Vernon Municipal Light Department
State: Colorado
  Regulatory Authority: Colorado Public Utilities Commission.
Gas Utilities
Publicly-Owned:
  Long Beach Gas Department
Sold State: District of Columbia
  Regulatory Authority: United States, Delaware Public Service Commission.
Gas Utilities
Publicly-Owned:
  *Groton Public Utilities
State: Delaware
  Regulatory Authority: Delaware Public Service Commission.
Gas Utilities
Investor-Owned:
  Washington Gas Light Company
Electric Utilities
Investor-Owned:
  Peoples Electric Power Company
State: Florida
  Regulatory Authority: Florida Public Service Commission.
Gas Utilities
Investor-Owned:
  City Gas Company of Florida
  Peoples Gas System
Electric Utilities
Investor-Owned:
  Florida Power Corporation
  Florida Power and Light Company
  Gulf Power Company
  Tampa Electric Company
Publicly-Owned:
  The Florida Public Service Commission has rate structure jurisdiction over the following utilities:
  Gainesville Regional Utilities
  Jacksonville Electric Authority
  Lakeland Department of Electricity and Water
  Orlando Utilities Commission
  Tallahassee, City of
Rural Electric Cooperatives: The Florida Public Service Commission has rate structure jurisdiction over the following utilities:

State: Georgia
  Regulatory Authority: Georgia Public Service Commission.
Gas Utilities
Investor-Owned:
  Atlanta Gas Light Company
  Gas Light Company of Columbus
Electric Utilities
Investor-Owned:
  Georgia Power Company
Investor-Owned Electric Utilities

**Gas Utilities**

Investor-Owned: Chattanooga Gas Company

**Publicly-Owned:**

*Albany Water, Gas & Light Commission
*Dalton Water, Light & Sink

**Rural Electric Cooperatives:**

*Cobb Electric Membership Corporation
*Douglas County Electric Membership Corporation
*Flint Electric Membership Corporation
*Jackson Electric Membership Corporation
*Walton Electric Membership Corporation

**State: Hawaii**

Regulatory Authority: Hawaii Public Utilities Commission.

**Gas Utilities**

None.

**Electric Utilities**


**State: Idaho**

Regulatory Authority: Idaho Public Utilities Commission.

**Gas Utilities**

Investor-Owned: Intermountain Gas Company
Washington Water Power Company

**Electric Utilities**

Investor-Owned: Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

**State: Illinois**


**Gas Utilities**

Investor-Owned: Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

**Electric Utilities**

Investor-Owned: Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

**Electric Utilities**

Publicly-Owned: Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

**Gas Utilities**

Investor-Owned: Indiana Gas Company
Southern Indiana Gas and Electric Company

Publicly-Owned: *Citizens Gas and Coke Utility

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

**Gas Utilities**

Investor-Owned: Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Peoples Natural Gas Company, Division of Internorth, Inc.

**Electric Utilities**

Investor-Owned: Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company

Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—

*Muscatine Power and Water

State: Kansas

Regulatory Authority: Kansas Corporation Commission.

**Gas Utilities**

Investor-Owned: Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company

**Electric Utilities**

Investor-Owned: Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
Western Power Division of Centel

**Rural Electric Cooperatives:**

*Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

**Electric Utilities**

Investor-Owned: Kansas City Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

**State: Kentucky**

Regulatory Authority: Kentucky Energy Regulatory Commission.

**Gas Utilities**

Investor-Owned: Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

**Electric Utilities**

Investor-Owned: Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company

**Rural Electric Cooperatives:**

Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission.

*Bowling Green Municipal Utilities
*Owensboro Municipal Utilities
*Pennyrile Rural Electric Cooperative Corporation
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

**State: Louisiana**

Regulatory Authority: Louisiana Public Service Commission.

**Gas Utilities**

Investor-Owned: Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)

**Electric Utilities**

Investor-Owned: Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System, Inc.
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)
Southwestern Electric Power Company
The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities
Publicly-Owned:
Lafayette Utilities System

Rural Electric Cooperatives:
Dixie Electric Membership Corporation
Southwest Louisiana Electric Membership Corporation

State: Maine
Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities
None.

Electric Utilities
Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company

State: Maryland
Regulatory Authority: Maryland Public Service Commission.

Electric Utilities
Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Gas Utilities
Investor-Owned:
Baltimore Gas and Electric Company

Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts
Regulatory Authority: Massachusetts Department of Public Utilities

Gas Utilities
Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company
Lowell Gas Company
New Bedford Gas and Edison Light Company

Electric Utilities
Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Massachusetts Electric Company
Western Massachusetts Electric Company

State: Michigan
Regulatory Authority: Michigan Public Service Commission.

Electric Utilities
Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Lake Superior District Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Electric Power Company

Rural Electric Cooperatives:

Gas Utilities
Investor-Owned:
Consumers Gas Company

Publicly-Owned:
Battle Creek Gas Company

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities
Investor-Owned:
Inter City Gas Company
Interstate Power Company
Iowa Electric Light and Power Company
Minnesota, Inc.
Montana-Dakota Utilities Company
Northern States Power Company
Peoples Natural Gas Company-Division of Intermorth Inc.

Electric Utilities
Investor-Owned:
Interstate Power Company

Gas Utilities
Publicly-Owned:
Lansing Board of Water and Light

State: Mississippi
Regulatory Authority: Mississippi Public Service Commission.

Electric Utilities
Investor-Owned:
Mississippi Power and Light Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

Gas Utilities
Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Laclede Gas Company
Missouri Public Service Company
Peoples Natural Gas Company-Division of Intermouth, Inc.

Electric Utilities
Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission.

Gas Utilities
Publicly-Owned:
Cities Service Gas Company

Electric Utilities
Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

Gas Utilities
Investor-Owned:
Montana-Dakota Utilities Company

Electric Utilities
Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska
Regulatory Authority: Nebraska Public Service Commission.
The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

**Electric Utilities**
- Investor-Owned: Lincoln Electric System
- Publicly-Owned: Nebraska Public Power District
- Omaha Public Power District

**Gas Utilities**
- Investor-Owned: Gas Service Company
- Iowa Electric Light and Power Company
- Iowa Public Service Company
- Kansas-Nebraska Natural Gas Company
- Minnegasco, Inc.
- Northwestern Public Service Company
- Peoples Natural Gas Company Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

**Public-Owned:**
- Metropolitan Utilities District of Omaha
- State: Nevada
  - Regulatory Authority: Nevada Public Service Commission
- **Gas Utilities**
  - Investor-Owned: Southwest Gas Corporation
- **Electric Utilities**
  - Investor-Owned: Idaho Power Company
  - Nevada Power Company
  - Sierra Pacific Power Company

**State: New Hampshire**
- Regulatory Authority: New Hampshire Public Utilities Commission
- **Gas Utilities**
  - Investor-Owned: Concord Natural Gas Corporation
- **Electric Utilities**
  - Investor-Owned: Public Service Company of New Hampshire

**State: New Jersey**
- Regulatory Authority: New Jersey Department of Energy Board of Public Utilities
- **Gas Utilities**
  - Investor-Owned: Elizabethtown Gas Company
  - New Jersey Natural Gas Company
  - Public Service Electric and Gas Company
  - South Jersey Gas Company

**Electric Utilities**
- Investor-Owned: Atlantic City Electric Company
- Jersey Central Power and Light Company
- Public Service Electric and Gas Company
- Rockland Electric Company

**State: New Mexico**
- Regulatory Authority: New Mexico Public Service Commission
- **Gas Utilities**
  - Gas Company of New Mexico
- **Electric Utilities**
  - Investor-Owned: El Paso Electric Company
  - Public Service Company of New Mexico
  - Southwestern Public Service Company
  - Texas-New Mexico Power Company

**State: New York**
- Regulatory Authority: New York Public Service Commission
- **Gas Utilities**
  - Investor-Owned: Brooklyn Union Gas Company
  - Columbia Gas of New York, Inc.
  - Consolidated Edison Company of New York, Inc.
  - Long Island Lighting Company
  - National Fuel Gas Distribution Corporation
  - New York State Electric and Gas Corporation
  - Niagara Mohawk Power Corporation
  - Orange and Rockland Utilities
  - Rochester Gas and Electric Corporation

**Electric Utilities**
- Investor-Owned: Central Hudson Gas and Electric Corporation
- Consolidated Edison Company of New York
- Long Island Lighting Company
- New York States Electric and Gas Corporation
- Niagara Mohawk Power Corporation
- Orange and Rockland Utilities
- Rochester Gas and Electric Corporation

**State: New York**
- Regulatory Authority: New York Public Service Commission
- **Electric Utilities**
  - Publicly-Owned: Power Authority of New York

**State: North Carolina**
- Regulatory Authority: North Carolina Utilities Commission
- **Gas Utilities**
  - Investor-Owned: North Carolina Natural Gas Corporation
  - Piedmont Natural Gas Company
  - Public Service Company, Inc. of North Carolina

**Electric Utilities**
- Investor-Owned: Carolina Power and Light Company
- Duke Power Company
- *Nantahala Power & Light Company
- Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

**Electric Utilities**
- Publicly-Owned: Fayetteville Public Works Commission
- *Greenville Utilities Commission
- *High Point Electric Utility Department
- *Rocky Mount Public Utilities
- *Wilson Utilities Department

**Rural Electric Cooperatives:**
- *Rutherford Electric Membership Corporation

**State: North Dakota**
- Regulatory Authority: North Dakota Public Service Commission

**Gas Utilities**
- Investor-Owned: Montana Dakota Utilities Company

**Electric Utilities**
- Investor-Owned: Montana Dakota Utilities Company
- Northern State Power Company
- Otter Tail Power Company

**State: Ohio**
- Regulatory Authority: Ohio Public Utilities Commission

**Gas Utilities**
- Investor-Owned: Cincinnati Gas and Electric Company
- Columbia Gas of Ohio, Inc.
- Dayton Power and Light Company
- East Ohio Gas Company
- National Gas and Oil Company
- West Ohio Gas Company

**Electric Utilities**
- Investor-Owned: Cincinnati Gas and Electric Company
- Cleveland Electric Illuminating Company
- Columbus and Southern Ohio Electric Company
- Dayton Power and Light Company
- Monongahela Power Company
- Ohio Edison Company
- Ohio Power Company
- Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

**Electric Utilities**
- Publicly-Owned: *Cleveland Division of Light and Power

**Rural Electric Cooperatives:**
- *South Central Power Company

**State: Oklahoma**
- Regulatory Authority: Oklahoma Corporation Commission

**Gas Utilities**
- Investor-Owned: Arkansas-Louisiana Gas Company
- Arkansas-Oklahoma Gas Corporation
- Gas Service Company
- Lone Star Gas Company
- Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities
Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

Rural Electric Cooperatives:
* Cotton Electric Cooperative

Gas Utilities
Investor-Owned:
Cities Service Gas Company

State: Oregon
Regulatory Authority: Oregon Public Utility Commission.

Gas Utilities
Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities
Investor-Owned:
Iowa Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Oregon Public Utility Commission:

Electric Utilities
Publicly-Owned:
Central Lincoln People's Utility District
* Clatskanie People's Utility District
Eugene Water and Electric Board
* Springfield Utilities Board

Rural Electric Cooperatives:
* Umatilla Electric Cooperative Association

State: Pennsylvania

Gas Utilities
Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities
Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
* UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities
Investor-Owned:
Philadelphia Gas Works

State: Puerto Rico
Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities
Investor-Owned:

None.

Electrical Utilities
Publicly-Owned:
* Puerto Rico Electric Power Authority

State: Rhode Island
Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities
Investor-Owned:

None.

Electric Utilities
Publicly-Owned:

Puerto Rico Electric Power Authority

State: South Carolina
Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities
Investor-Owned:

Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities
Investor-Owned:
Carbona Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina is not regulated by the South Carolina Public Service Commission:

Gas Utilities
Publicly-Owned:

South Carolina Public Service Authority

Rural Electric Cooperatives:
* Berkeley Electric Cooperative, Inc.

State: South Dakota
Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities
Investor-Owned:

Iowa Public Service Company
Minneapolis, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities
Investor-Owned:

Black Hills Power and Light Company
Iowa Public Service Company

Montana-Dakota Utilities Company
Northern States Power Company
* Northwestern Public Service Company
* Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities
Publicly-Owned:

Nebraska Public Power District
Stater Tennessee Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities
Investor-Owned:

Chattanooga Gas Company
National Gas Company

Electric Utilities
Investor-Owned:

Kingsport Power Company

* The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Gas Utilities
Publicly-Owned:

* Bristol Tennessee Electric System
Chattanooga Electric Board
* Clarksville Department of Electricity
* Cleveland Utilities
* Greeneville Light and Power System
* Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
* Lenoir City Utilities Board
Memphis Light Gas and Water Division
* Murfreesboro Electric Department
* Nashville Electric Services

Rural Electric Cooperatives:
* Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
* Duck River Electric Membership Corporation
* Gibson County Electric Membership Corporation
* Menasha Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
* Southwest Tennessee Electric Membership Corporation
* Tri-County Electric Membership Corporation
* Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities
Publicly-Owned:

Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities
None.

Electric Utilities
Publicly-Owned:
jurisdiction over electric utility rates, electric utility (whether privately owned or
operations and services provided
municipality exercises exclusive original
Rural Electric Cooperatives:
Investor-Owned:
Gas Utilities
Investor-Owned:

V Knoxville Utilities Board
*Lenor City Utilities Board
Memphis Light, Gas and Water Division
*Murfreesboro Electric Department
Nashville Electric Service

Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Corporation
*Duck River Electric Membership
Corporation
*Four-County Electric Power Association
*Gibson County Electric Membership
Corporation
*Memnower Lewis Electric Cooperative
Middle Tennessee Electric Membership
Corporation
North Georgia Electric Membership
Corporation
*Penrylile Rural Electric Membership
Corporation
*Southwest Tennessee Electric
Membership Corporation
*Tri-County Electric Membership
Corporation
*Upper Cumberland Electric Membership
Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative
Corporation
*West Kentucky Rural Electric Cooperative
Corporation

State: Texas
*Regulatory Authority: Texas Public Utility
Commission.

Gas Utilities
Investor-Owned:
None.

Electric Utilities
Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company
Publicly-Owned:
* Lower Colorado River Authority

Rural Electric Cooperatives:
* Guadalupe Valley Electric Cooperative
Pedernales Electric Cooperative
The governing body of each Texas
municipality exercises exclusive original
jurisdiction over electric utility rates,
operations and services provided by an
electric utility (whether privately owned or

Gas Utilities
Investor-Owned:

Electic Utilities
Investor-Owned:

Investor-Owned:

Investor-Owned:

Investor-Owned:

Volunteer Electric Cooperative
Rural Electric Cooperatives:

The governing body of each Texas
municipality exercises exclusive original
jurisdiction over electric utility rates,
operations and services provided by an
electric utility (whether privately owned or

Gas Utilities
Investor-Owned:

Electric Utilities
Investor-Owned:

State: Texas
Regulatory Authority: Railroad
Commission of Texas.

Gas Utilities
Investor-Owned:

Electric Utilities
Investor-Owned:

Investor-Owned:

Investor-Owned:

Investor-Owned:

Investor-Owned:

Gas Utilities
Publicly-Owned:

City of Richmond, Virginia, Department of
Public Utilities

State: Washington
Regulatory Authority: Washington Utilities
and Transportation Commission.

Gas Utilities
Investor-Owned:

Electric Utilities
Investor-Owned:

City of Benton, Arkansas

Gas Utilities
None.

Electric Utilities
Investor-Owned:

Investor-Owned:

Investor-Owned:

Investor-Owned:

Investor-Owned:

Publicly-Owned:

*Port Angeles Light and Water Department
Public Utility District No. 1 of Benton
County
Public Utility District No. 1 of Chelan
County
Public Utility District No. 1 of Clark County

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### Investor-Owned: Gas Utilities

<table>
<thead>
<tr>
<th>Utility Name</th>
<th>State</th>
<th>Abbreviation</th>
</tr>
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<tbody>
<tr>
<td>Arizona Power &amp; Light Company</td>
<td>Arizona</td>
<td>AZP &amp; L</td>
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<tr>
<td>Arkansas Power &amp; Light Company (AR)</td>
<td>Arkansas</td>
<td>APL &amp; L</td>
</tr>
<tr>
<td>Atlantic City Electric Company</td>
<td>New Jersey</td>
<td>ALECO</td>
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<tr>
<td>Baltimore Gas &amp; Electric Company</td>
<td>Maryland</td>
<td>BGE</td>
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<tr>
<td>Bangor Hydro-Electric Company</td>
<td>Maine</td>
<td>BHEC</td>
</tr>
<tr>
<td>Black Hills Power &amp; Light Company (MT)</td>
<td>South Dakota</td>
<td>BHP &amp; L</td>
</tr>
<tr>
<td>Black Hills Power &amp; Light Company (SD)</td>
<td>South Dakota</td>
<td>BHP &amp; L</td>
</tr>
<tr>
<td>Black Hills Power &amp; Light Company (WY)</td>
<td>Wyoming</td>
<td>BHP &amp; L</td>
</tr>
<tr>
<td>Boston Edison Company</td>
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<td>BSEC</td>
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<tr>
<td>Cambridge Electric Light Company</td>
<td>Massachusetts</td>
<td>CELC</td>
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<tr>
<td>Carolia Power &amp; Light Company (NC)</td>
<td>South Carolina</td>
<td>CPL &amp; L</td>
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<tr>
<td>Central Hudson Gas &amp; Electric Corporation</td>
<td>New York</td>
<td>CHGEC</td>
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<td>Central Illinois Light Company</td>
<td>Illinois</td>
<td>CILC</td>
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<td>Central Illinois Public Service Company</td>
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<td>CIPSC</td>
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<td>Central Louisiana Electric Company</td>
<td>Louisiana</td>
<td>CLEC</td>
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<td>Central Maine Power Company</td>
<td>Maine</td>
<td>CMPC</td>
</tr>
<tr>
<td>Central Power &amp; Light Company</td>
<td>Connecticut</td>
<td>CPLC</td>
</tr>
<tr>
<td>Central Vermont Public Service Corporation</td>
<td>Vermont</td>
<td>CVPSC</td>
</tr>
<tr>
<td>Cincinnati Gas &amp; Electric Company</td>
<td>Ohio</td>
<td>CGEC</td>
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<tr>
<td>Cleveland Electric Illuminating Company</td>
<td>Ohio</td>
<td>CEIC</td>
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<tr>
<td>Columbus and Southern Ohio Electric Company</td>
<td>Ohio</td>
<td>CSEOC</td>
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<td>Commonwealth Edison Company</td>
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<td>CECO</td>
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<tr>
<td>Commonwealth Electric Company</td>
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<td>CECO</td>
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<tr>
<td>Connecticut Light &amp; Power Company</td>
<td>Connecticut</td>
<td>CLPC</td>
</tr>
<tr>
<td>*Conowango Power Company</td>
<td>New York</td>
<td>CP</td>
</tr>
</tbody>
</table>
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Edison Company (DC)
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Company of West Virginia
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
Toledo Edison Company
Tucson Electric Power Company
*UGI-Luzerne Electric Division
Union Electric Company (LA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (CO)
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)
Publicly-Owned:
*Albany Water, Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bowling Green Municipal Utilities (KY)
*Bristol Tennessee Electric System (TN)
*Brownsville Public Utility Board (TX)
*Bryan Municipal Electric System (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clataxkame People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Sprngs Department of Utilities (CO)
*Dalton Water, Light & Sink (GA)
*Danville Water, Gas & Electric (VA)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
*Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
*Greenville Light & Power System (TX)
*Greenville Utilities Commission (NC)
*Groton Public Utilities (CT)
*High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (TN)
Johnson City Power Board (TN)
Kansas City Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
*Lenor City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Murfreesboro Electric Dept. (TN)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
Omaha Utilities (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Levis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
*Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rochester Department of Public Utilities (MN)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Saline River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
South Carolina Public Service Authority
*Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tecoma Public Utilities—Light Division (WA)
Tallahassee, City of (FL)
*Tulare Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

**Rural Electric Cooperatives**

*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
*Berkeley Electric Cooperative (SC)
*Chugach Electric Association (AK)
*Clay Electric Cooperative (FL)
*Cobb Electric Membership Corporation (GA)
*Cotton Electric Cooperative (OK)
*Cumberland Electric Membership Corporation (TN)
*Dakota Electric Association (MN)
*Douglass County Electric Membership Corporation (GA)
*Dixie Electric Membership Corporation (LA)
*Duck River Electric Membership Corporation (TN)
*First Electric Cooperative Corporation (AR)

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the NECPA threshold of 10 billion cubic feet in 1983 for purposes other than resale, or do not have residential or commercial sales. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned

Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Andaroko Production Company
Arizona Public Service Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Louisiana Gas Company (TX)
Arkansas-Dakota Gas Company (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Cape Fear Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Corporation
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Service Gas Company (covered by NECPA only)
City Gas Company of Florida
City Service Gas Company
Colonial Gas Energy System
Colonial Gas Co. of New York, Inc.
Commonwealth Gas Company
Commonwealth Gas Corporation
Commonwealth Gas Service Corporation
Commonwealth Gas Services, Incorporated
Concord Natural Gas Corporation
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company
East Ohio Gas Company
Elizabethtown Gas Company
Energie Gas Corporation
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (NY)
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Illinois Power Company
Indiana Gas Company
Inter City Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (K)
Kansas-Nebraska Natural Gas Company (NE)
Kansas-Nebraska Natural Gas Company (WI)
Kansas-Power & Light Company
Laclede Gas Company Consolidated
Long Star Gas Company (OK)
Long Star Gas Company (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Light Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnesota, Inc. (MN)
Minnesota, Inc. (NE)
Minnesota, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Bedford Gas and Edison Light Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northeast Utilities (CT)
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (WI)
Northern Penn Gas Company

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1978, 1977, 1976, 1975, 1981, 1982 or 1983. All except those marked (*) are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either do not exceed
Northwest Alabama Gas District
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (CO)
Peoples Natural Gas Company, Division of Internorth, Inc. (LA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)
Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Peoples Natural Gas Company, Division of Internorth, Inc. (TX)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southern Utilities Gas Company (TX)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned

Chattanooga Gas Company (GA)
Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Public Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

[FR Doc. 84-33760 Filed 12-29-84; 8:45 am]
BILLING CODE 6450-01-M
Part IV

Department of Energy

10 CFR Part 458
Commercial and Apartment Conservation Service Federal Standby Plan; Notice of Proposed Rulemaking and Public Hearings
DEPARTMENT OF ENERGY
Office of Conservation and Renewable Energy

10 CFR Part 458
[Docket No. CE-83-126]

Commercial and Apartment Conservation Service Federal Standby Plan

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) is proposing this regulation to implement section 741(a) of the National Energy Conservation Policy Act (NECPA) which was added by the Energy Security Act (ESA), Section 741 is a part of Title VII of NECPA, which established the Commercial and Apartment Conservation Service (CACS) Program. The CACS Program requires large gas and electric utilities, to perform energy audits for eligible customers in small commercial buildings and larger apartment buildings on request. The CACS Program is intended to be carried out by these utilities in conformance with Plans submitted to DOE by States. Where States choose not to submit plans, where a plan submitted is subsequently disapproved, or where an approved plan is being inadequately implemented, DOE is required to implement CACS directly under CACS Federal Standby. For regulated utilities DOE implements Federal Standby by requiring those utilities to carry out programs under a CACS Federal Standby Plan. This proposed rule is a CACS Federal Standby Plan promulgated under section 741 of NECPA.

In developing this proposed CACS Federal Standby Plan (CACS Standby Plan or Standby Plan), DOE has relied heavily on the final regulation for the CACS Program (48 FR 45932, Oct. 26, 1983). However, this proposed CACS rule does differ from the CACS Final Rule since DOE is required to assume, when necessary, the responsibilities associated with directly administering the CACS Program.

Pursuant to Section 741(a) of NECPA, regulated utilities are subject to the provisions of the CACS Standby Plan only after DOE issues an order directing a particular regulated utility to comply with the CACS Standby Plan.

DATES: A public hearing on the proposed CACS Standby Plan will be held on February 13, 1985 at 9:30 a.m. Requests to speak at the hearing must be received no later than 4:30 p.m. on February 7, 1985. Please bring at least five copies of the oral statement to the hearing.

Written comments (8 copies) on this proposed rule must be received by March 1, 1985, 4:30 p.m., e.g.t., to ensure their consideration.

ADDRESSES: All written comments (8 copies) and requests to speak at the public hearing should be addressed to: Office of Conservation and Renewable Energy, Hearings and Dockets.


The public hearing will be held in Room 1E-245 at the U.S. Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.


SUPPLEMENTARY INFORMATION:
I. Introduction
The Commercial and Apartment Conservation Service (CACS) Program was established by Title VII of the National Energy Conservation Policy Act (NECPA), as added by Subtitle D of Title V of the Energy Security Act (ESA), Pub. L. 96-294, June 30, 1980, 42 U.S.C. 8211 et seq. The CACS Program, as mandated by statute, requires large electric and natural gas utilities to offer to perform energy audits for eligible customers in commercial and apartment buildings. The CACS Program is intended to be carried out by these utilities in conformance with Plans submitted to DOE by States, State participation, however, is voluntary.

For those States that elect to participate in CACS, the legislation requires detailed State planning and oversight activity. Section 741(a) of NECPA provides that, if a State does not have an approved Plan within 90 days after Plans are due to DOE, or if DOE determines, after notice and opportunity for a public hearing, that an approved Plan is not being implemented adequately in a State, DOE shall promulgate a plan that meets the requirements of the Act. Section 741(a) also provides that DOE shall require, by order, each covered utility in such State to implement the CACS Federal Standby Plan (CACS Standby Plan or Standby Plan) within 90 days of that order. Thus, where States are unwilling or unable to carry out their role under the law, the legislation requires implementation of a CACS Standby Plan.

Since DOE believes that a program such as CACS is best administered by the individual States, DOE hopes that all States will submit plans and implement them adequately, thus eliminating the need for Federal involvement in the local administration of this program.

Nevertheless, since several States have informed DOE that they do not intend to submit CACS Plans, DOE is submitting this CACS Standby Plan to carry out its responsibilities under NECPA.

Section 741(a)(1) of NECPA requires that the CACS Standby Plan meet the requirements of Section 722 for CACS plans. There is, thus, a great degree of uniformity between the CACS Standby Plan and the final regulation concerning State plans (10 CFR Part 458 Subparts B and C). The basic difference between the two rules is that in the CACS Standby Plan, DOE assumes the role and responsibility otherwise delegated to the State lead agency under the CACS final rule. This means, that, wherever the State or its lead agency is the responsible party for a statutory element of the CACS Program, DOE has that responsibility under the CACS Standby Plan. It also means that where the CACS Final Rule provides the States with flexibility and discretion in implementing a provision, under the CACS Standby Plan DOE determines how to exercise such discretion. Thus, this CACS Standby Plan includes mandatory provisions from the Final Rule and also specifies how DOE has exercised the discretion given to States as program administrators in the Final Rule.

In determining when it was necessary to develop provisions not in the CACS final rule, DOE has attempted to balance a number of objectives. These are:

1) To provide adequate control and oversight by DOE, as the direct administrator of the CACS program in States where Federal Standby is involved, to ensure safe, effective, and nondiscriminatory implementation of the program by affected utilities;

2) To interpret DOE’s role as the “lead agency” with enough specificity to provide for the rapid and comparatively
uniform implementation of the Plan by utilities in any given State;

(3) To provide utilities with enough flexibility to enable them to develop Programs reflecting the economic and climatic conditions of their service areas; and

(4) To minimize the administrative workload of both DOE and the affected utilities.

A major goal of the CACS final rule was to provide flexibility to the States. However, DOE does not propose to provide the same degree of flexibility to individual utilities in the CACS Federal Standby Plan. This is because, as program administrators, DOE must prescribe schedules, procedures, and alternatives that would otherwise have been prescribed by the lead agency in the State Plan.

DOE’s approach to the flexibility issue has been to vary the amount of flexibility allowed to utilities, depending upon the issue. The Standby Plan below includes many requirements which may not be changed by utilities. There are also requirements and options in particular provisions which allow for variations or require utilities to submit additional information. These latter requirements and options are referenced throughout the rule, and are summarized in § 458.715. In this way, DOE hopes to enable utilities operating under a current CACS Plan in one State to adopt a similar program in a State operating under the CACS Federal Standby Plan.

The discussion below includes only those provisions which differ from the CACS final rule. The preamble does not discuss the provisions of the CACS Federal Standby Plan which are identical or similar to those in the CACS Final Rule, including those specifically required by NECPA. Throughout the discussion, we will be using the term “utilities” to include participating building heating suppliers, unless otherwise noted.

II. Major Provisions

A. Section 458.702 Definitions

All definitions relevant to the CACS Federal Standby Plan are found in §§ 458.102–458.104 with the following exceptions: “CACS Federal Standby Plan,” “CACS Standby Announcement,” “CACS Standby Audit,” “Participating Building Heating Supplier,” and “Standby Utility,” which are defined in § 458.702 for the convenience of the readers of this Notice, relevant definitions from § 458.102–104 have been reprinted as Appendix III.

B. Section 458.703 Coverage

Section 458.703(a) limits the coverage of this plan to regulated covered utilities in a State where the Standby Plan is ordered to be enforced. Nonregulated covered utilities are not affected by this proposed rule. Under § 741(b) of NECPA, DOE implements Standby with respect to a nonregulated utility by requiring the utility to submit a plan meeting the CACS Final Rule requirements.

Section 458.703(b) provides for voluntary building heating supplier participation in the Standby Plan. As noted elsewhere, DOE is interested in hearing during the comment period whether building heating suppliers are interested in participating in CACS Federal Standby.

C. Section 458.704 Procedures for investigating and enforcing compliance with the CACS Standby Plan

Section 458.704(a) requires compliance by utilities subject to the CACS Standby Plan.

Under § 458.704(b), individuals or groups of individuals may report suspected noncompliance to the Assistant Secretary. Standby utilities must tell customers in the CACS Standby announcement how to report this noncompliance. In accordance with § 458.704(c), the Assistant Secretary will investigate allegations of noncompliance.

D. Section 458.705 CACS Standby Announcement

In this proposal, as required by NECPA, each utility must offer a CACS Standby audit to each eligible customer no later than 90 days after DOE issues an order under § 458.503(b) for the utility to comply with the Plan. The utility must repeat this offer every two years thereafter until January 1, 1990.

Participating building heating suppliers must offer audits to all eligible customers within 90 days of approval of their participation in the Plan. This proposed rule allows the first audit offer to be conditioned upon a nondiscriminatory factor such as geographic area or type of energy customer. Standby utilities which choose to exercise this flexibility must submit to DOE for approval a description of the factors that they intend to use to condition the audits in accordance with § 458.715. Unlike the CACS Final Rule, which allows an interval of two years between a conditional and an unconditional audit offer, this proposed rule requires the subsequent unconditional offer to be given within one year of a conditional offer.

Section 458.705(c) requires the announcement to include: an audit offer, an explanation of how to request the audit, the audit cost, an explanation of how suspected noncompliance with the Standby Plan can be reported to DOE, and a notice of the availability at no charge of reports of audits previously performed for the building.

DOE invites comments on whether additional information on available financial assistance (e.g., applicable State tax credits or other available financial incentives) should be required in the Standby announcement.

Section 458.705(d) contains a general prohibition against advertising for supply, installation, or financing of program measures, energy conserving products, or energy conserving operation and maintenance procedures. A Standby utility may request an exemption from this prohibition. Section 458.715 requires that the exemption request include procedures which reasonably assure that any such advertising will not be anticompetitive or discriminatory. Section 458.705(d) also contains a general prohibition against discriminatory activities relating to the Standby announcement.

E. Section 458.706 CACS Standby Audit

The requirements for CACS Standby audits are similar to those contained in the CACS Final Rule although several modifications have been made to adjust for the DOE role as program administrator.

(a) Timing of a CACS Standby audit. Section 458.706(a) of this proposed rule requires that Standby utilities provide an audit within 90 days of a request made in response to an unconditional audit offer. This proposed rule also requires that standby utilities which first conditionally offer audits to customers to provide audits within 45 days of requests which respond to a later unconditional offer. As noted above, standby utilities which first make conditional offers must follow those offers with unconditional offers within one year.

(b) Prohibition against preconditions and discrimination. Section 458.706(b) contains a general prohibition against preconditions for providing CACS Standby audits and discrimination among customers in providing audits. NECPA intends that all CACS audits be conducted on site and that eligible customers not be burdened by adhering to preconditions such as completion of a class B audit or consumption data
collection forms prior to receiving any CACS audit, including the CACS Standby audit. The audit is intended to be easily available for a minimum of effort on the part of the eligible customer.

(c) Condition for receiving a CACS Standby audit of an apartment building. The utility must require an eligible customer of an apartment building to certify, as a condition for receiving an audit, that the customer agrees to supply to tenants, in a timely manner, information resulting from the audit that is applicable to the tenants’ apartments. DOE proposes in this Standby Plan that this information be developed by the utility for distribution by eligible multifamily customers to all their tenants. The information should address all program measures and operation and maintenance procedures which are applicable to a specific apartment unit. This information is intended to be developed specifically for tenants and is not intended to be simply a copy of the audit results for the entire building.

DOE is concerned that this legislative requirement for tenant information may serve as a disincentive for multifamily building owners to participate and has therefore proposed to make this requirement as positive as possible: In an effort to assist utilities in the development of the tenant information, DOE is developing a general tenant conservation brochure which utilities may customize for their multifamily customers to meet this requirement. Section 458.715 requires that utilities submit to DOE a copy of the tenant information brochure(s) which they will use to respond to this requirement.

(d) Content of a Standby audit. Section 458.706(d)(1) requires on-site audits to address all applicable program measures, all measures added by the utility, and all operation and maintenance. A Standby utility must submit a description of the CACS Standby audit it will offer. This description should include the source (or vendor) of the audit calculations and/or algorithms, the level of accuracy of audit results, and the degree to which the audit is dependent upon site-specific measurements and calculations.

In the CACS final rule, States were required to describe procedures for ensuring the technical validity of the audit. Because there is no State role in CACS Federal Standby, this requirement was changed. DOE is proposing that utilities may either use audits previously validated by DOE or may validate their own audits by adhering to the procedures in CACS Audit Validation Procedures (Appendix II). These procedures must be documented and submitted to DOE as part of the utility submission. A more complete background, description, and samples of the CACS Audit Validation Procedures are available from the DOE Office of Conservation and Renewable Energy (see address under Summary). Audit validation must address audit procedures on a measure-by-measure basis and must include all program and Standby measures.

There are two general approaches to validating audit procedures. In an analytical approach, the algorithms from the procedure are compared to those from standard references. In a comparative approach, the energy-savings predictions based on the procedure are compared to similar values from established analysis techniques. Under both approaches, validation includes verifying that key parameters in the procedure are allowed to vary, and that the numerical values of both variable and fixed inputs are within appropriate ranges.

The selection of appropriate references will depend on the validation approach that is chosen. Analytical references contain algorithms which may require some manipulation to obtain equations that can be directly compared to those in the audit procedure. Computerized calculation methods are appropriate for a comparative approach. A parametric analysis can be run using both the computerized and audit methods, and the results can be compared.

DOE expects that when references are cited in the audit verification submittal, the citation will be specific enough to show which portions of the reference will be used. Chapter titles, equation and page numbers, sections of computer codes, etc., should be included as appropriate.

DOE is proposing that Standby utilities have the same opportunity to modify or add to the applicability criteria listed in Appendix I that States had in the CACS final rule. It is intended that these applicability criteria will be used to determine whether a particular measure should be audited in each building. However, if changes or additions are desired, the utility must submit to DOE adequate justification for the changes requested. DOE will only approve modifications to applicability criteria which objectively show a program measure to be unlikely to perform as intended in a specific situation and therefore unlikely to be cost-effective, i.e., unlikely to pay back in less than seven years.

DOE is proposing that Standby utilities have the same opportunity to add, with DOE approval, additional program measures and energy conserving operation and maintenance procedures which are appropriate to the utility service area that States had in the CACS final rule. Criteria for approving additional measures are described in § 458.707(a).

(e) Audit Results. DOE is proposing that the requirements for providing audit results in the Standby Plan be identical to those in the CACS final rule.

(f) Prohibitions. DOE is proposing that the prohibitions which applied to the CACS final rule also apply to the proposed CACS Standby Plan.

(g) Anticompetitive Issues. The Department has received suggestions for additional provisions designed to prevent anticompetitive practices from the U.S. Small Business Administration (SBA) and the Alliance for Fair Competition (a group of small business trade associations). They recommend that a utility be required to enter into contract to perform the audits rather than perform them with its own staff. They recommend that a utility be prohibited from making its audit results available to its own marketing department. They recommend that a utility be required to notify a customer's other fuel suppliers prior to the audit. They also recommend that the utility disclose any potential conflict of interest.

These concerns are expressed in greater detail in an SBA letter dated August 2, 1984, and in an Alliance for Fair Competition letter dated September 22, 1984, which are part of the rulemaking docket for interested parties to review. The SBA has prepared a report on utility competition and the CACS program, which can be obtained from the SBA Office of Advocacy, Washington, DC, 20414, (202) 694-6115.

The Department is interested in receiving comments on whether the proposed rules should be modified to provide more explicit provisions to prevent anticompetitive practices.

F Section 458.707 Adding and/or deleting measures

(a) Adding measures. DOE proposes to permit Standby utilities to add to the Standby audit, with DOE approval, measures other than those defined in § 458.104. Criteria which DOE will use in approving additional measures include the following:

- The measure must not result in the replacement of one fuel source for another for a particular end use;
- The measure must result in a payback of 7 years or less;
The measure may only be considered when it is not already present and in good condition; and installation of a measure must not violate Federal, State or local laws or regulations.

DOE is proposing the following formula for use in determining payback:

\[ P = \frac{F - T}{S}; \quad P < 7 \text{ years} \]

where:

- \( P \) = payback period in years
- \( F \) = first cost of a measure installed
- \( T \) = tax credits or incentives (if applicable)
- \( S \) = first-year energy savings in dollars

Utilities may incorporate local material and installation costs, local climate characteristics, local utility rates and other factors which may be unique to their area. Utilities must submit, however, the assumptions used in the formula described above, including the calculation used to determine \( S \), first-year energy savings in dollars. In addition to submitting this data, the utility must also submit a definition of the measure to add.

The differences in climate and energy costs should influence a utility's decision concerning which measures to include in an audit, and DOE encourages CACS Standby utilities to add measures whenever appropriate.

(b) Deleting measures. DOE also proposes to permit utilities to delete from the Standby audit, with DOE approval, measures defined in § 458.104. A utility may delete a measure by showing that the measure does not pay back in 7 years using the formula described in (a) above. Utilities must submit, just as they must when adding a measure, all assumptions used in the formula and the calculation used to determine first-year energy savings in dollars. Unless specifically deleted, all measures described in § 458.104 must be included in a Standby audit unless they are not applicable to a particular building (using the criteria in Appendix I).

G. Section 458.708 Auditor Qualifications

DOE proposes in § 458.708(a) that Standby utilities must provide an adequate number of auditors for the program. Section 458.708(a) further requires auditors to possess knowledge and skills in the specified areas. These areas include a general knowledge of program measures, auditing techniques, and utility rates, and more specific knowledge about building loads and systems. The utility is also required to submit a description of training procedures and materials to be used to ensure auditors' qualifications along with a schedule for implementation. This information must be submitted to DOE in accordance with § 458.715. DOE believes these qualifications and training procedures are essential to providing quality CACS audits.

H. Section 458.709 On-going programs

Section 458.709(a) provides the Assistant Secretary with discretion to allow continuation of utility CACS activities under an approved State Plan when a State lead agency is no longer administering the program. Section 458.709(b) provides the Assistant Secretary with discretion to allow expansion of utility CACS activities under an approved State Plan into service territories in States in which DOE is implementing Standby. Both of these provisions are designed to minimize the burden on utilities in complying with CACS Standby.

Section 458.709(c) provides the Assistant Secretary with discretion to designate audits performed prior to issuance of a Standby order as audits that need not be duplicated under Standby. The Plan sets out, however, a criterion that is more stringent than in the CACS final rule. Under this section, it is proposed that audits that need not be duplicated must be fully responsive to § 458.306 of the CACS final rule. Thus, under this proposal, audits must evaluate all the CACS measures in an on-site audit to be considered for designation as audits that need not be duplicated.

I. Section 458.710 Participating Building Heating Suppliers

Section 458.710 permits building heating supplier participation in CACS Standby once an order has been issued in a State. The section allows for voluntary participation, waiver of some of the Program requirements, and voluntary withdrawal. DOE is interested in receiving comments on the extent of building heating supplier interest in participating in the CACS Standby Plan. Home heating suppliers have shown little or no interest in participating in RCS Federal Standby.

J. Section 458.714 Reports and Recordkeeping

DOE proposes that reports be due 6 months after DOE approval of a utility's program and no later than each July 1 thereafter. If the second report is required to be submitted less than 90 days prior to July 1, the first annual report will not be due until the following July 1.

III. Regulatory Impact Analysis

Section 3(f)(3) of Executive Order 12291 generally requires that an agency prepare a Regulatory Impact Analysis for rules that are likely to have a major impact. DOE determined that the CACS Program regulation was a major action and required preparation of a regulatory impact analysis. Consequently, DOE prepared the analysis, which was published in conjunction with the CACS Final Rule published on October 28, 1993 (DOE/ CE-0031). Since the proposed CACS Federal Standby Plan regulation is not a new program, but rather allows DOE to administer the program where States choose not to administer the program themselves, DOE has determined that the CACS Standby regulation is covered in the scope of the overall CACS Program analysis. A separate regulatory analysis is therefore not required for this rulemaking.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires, in part, that agencies prepare an initial Regulatory Flexibility Analysis for any proposed rule unless it is determined that the rule will not have "a significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the Federal Register.

The proposals in this rule would have an impact mainly on major utilities. DOE expects that there will be minimal impact upon the small entities that elect to participate in the program. DOE also believes that there are sufficient provisions in the proposed regulation to prevent the occurrence of anticompetitive acts or practices. For these reasons, pursuant to section 603(b) of the Regulatory Flexibility Act, DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), DOE prepared a Final CACS Supplement to the Final Environmental Impact Statement (EIS) for the Residential Conservation Service Program (DOE/EIS-0750-ES in August 1985). The program analyzed in that EIS included the possible Federal role in promulgating a plan for utilities in States that refuse to or are unable to participate. The notice of availability
The subject matter of this proposed rulemaking is within the scope of the CACS Environmental Impact Statement Supplement, and the impacts of the proposed rulemaking were adequately addressed in the CACS EIS Supplement.

VI. Paperwork Reduction Act

The information collection requirements contained in §§ 458.714 and 458.715 have been approved by the Office of Management and Budget (OMB) under control number 1910–1400. Any comments on the information collection requirements of this proposal should be submitted to both DOE and OMB as indicated below.

VII. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments regarding the proposed rulemaking, to make a written request to be heard. A

B. Hearing Procedures

The time and location of the public hearing is given in the Dates and Address section of this preamble. DOE invites any person who has an interest in the proposed rulemaking, or who is a representative of a group or class of persons that has an interest in the proposed rulemaking, to make a written request to make an oral presentation. Such a request should be directed to the address given in the dates and address section of this preamble and must be received before 4:30 p.m. on the date specified in the dates section. A request should be labeled both on the document and on the envelope “CACS Federal Standby Plan.”

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has an interest in the Plan; give a concise summary of the proposed oral presentation; and provide a telephone number at which he or she may be contacted on the day of the hearing.

Each person who is selected to be heard will be notified by DOE before 4:30 p.m. on February 8, 1985. Persons selected to appear at the hearing must bring at least five copies of their statements to the hearing site given above in the addresses section of this preamble. The hearing will begin at 9:30 a.m., local time.

C. Conduct of Hearings

DOE reserves the right to arrange the schedule of representatives to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will evaluate the question's relevance and whether or not time limitations permit it to be presented for a response. The presiding officer will announce any additional procedural rules needed for the proper conduct of the hearing.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Lists of Subjects in 10 CFR Part 450

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Solar energy, and Utilities.

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 in Part 450 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., August 9, 1984.
Pat Collins,
Acting Assistant Secretary, Conservation and Renewable Energy.

PART 450—[AMENDED]

1. 10 CFR Part 450 is amended by adding to the Table of Contents the following entries for Subparts F and G:

Subpart F—[Reserved]

Subpart G—Commercial and Apartment Conservation Service Federal Standby Plan

Sec.
458.701 Purpose and scope.
458.702 Definitions.
458.703 Coverage.
458.704 Procedures for investigating and enforcing compliance with the CACS Standby Plan.
458.705 CACS Standby announcement.
458.706 CACS Standby audit.
458.707 Adding and/or deleting measures.
458.708 Auditor qualifications.
458.709 Ongoing programs.
458.710 Participating building heating suppliers.
458.711 Accounting and payment of costs.
458.712 Customer billing.
458.713 Coordination.
458.714 Reports and recordkeeping.
458.715 Information to be submitted to the Assistant Secretary.

Appendix I: Program Measure Applicability Criteria

Appendix II: CACS Audit Validation Procedures

2. 10 CFR Part 450 is amended by adding a new Subpart G to read as follows:

Subpart G—Commercial and Apartment Conservation Service Federal Standby Plan

§ 458.701 Purpose and scope.

(a) This subpart contains the Commercial and Apartment Conservation Service Federal Standby Plan.
Plan (CACS Standby Plan or Standby Plan) which DOE is required to
promulgate in accordance with section 741 of NECPA. DOE will implement the
CACS Standby Plan in a State when the State does not have an approved CACS
State Plan within the necessary time limits or fails to implement adequately a
DOE approved State Plan.

(b) The CACS Standby Plan contains the functions which Building utilities
will be required to perform under a DOE order issued under § 458.503(b). The
core of the CACS Standby Plan is the offer and performance of an on-site
energy audit of an eligible customer's building.

§ 458.702 Definitions.

The definitions in §§ 458.102—458.104 are applicable to this subpart. In
addition, for purposes of this subpart, the term—

"CACS Federal Standby Plan" (CACS Standby Plan or Standby Plan) means
the plan set forth in Subpart J of this part.

"CACS Standby Announcement" means the offer of a CACS Standby
audit which § 458.705 requires a Standby Utility or a participating
building heating supplier to provide to each eligible customer.

"CACS Standby Audit" means an on-site inspection of a commercial
building or an apartment building which meets the requirements of § 458.705.

"Participating Building Heating Supplier" means a building heating
supplier that has elected to participate in the CACS Standby Plan pursuant to
§ 458.710.

"Standby Utility" means a covered utility or a participating
building heating supplier which has received an order under § 458.503(b) for
implementation of a CACS Standby Plan.

§ 458.703 Coverage.

(a) Utilities subject to the CACS Standby Plan. All covered regulated
utilities which provide utility service in a State where the Assistant Secretary
has issued an order under § 458.503(b) for implementation of a CACS Standby
Plan shall be subject to the CACS Standby Plan.

(b) Participating building heating suppliers. Any building heating supplier
in a State where the Assistant Secretary has issued a Standby order which wishes
to participate in the Standby Plan may so notify the Assistant Secretary in accordance with § 458.710.

§ 458.704 Procedures for Investigating and enforcing compliance with the CACS
Standby Plan.

(a) Each Standby utility and each participating building heating supplier
shall comply with the Standby Plan upon receipt of an order under
§ 458.503(b).

(b) (1) Individuals or groups of individuals who wish to report possible
noncompliance with the CACS Standby Plan may inform the Assistant
Secretary. (2) Each Standby utility and each participating building heating
supplier shall inform its customers how to report possible noncompliance with
the Standby Plan to the Assistant Secretary. The CACS Standby
announcement distributed pursuant to § 458.705 must contain this information.

(c) The Assistant Secretary shall investigate any allegation of noncompliance or any complaint
submitted to DOE concerning the implementation of the CACS Standby Plan and may utilize reviews of the activities of Building utilities or participating building heating suppliers to determine compliance with the Standby Plan.

§ 458.705 CACS Standby announcement.

(a) Distribution.—(1) Utilities. Each Standby utility shall offer each eligible
customer a CACS Standby audit no later than 90 days after the Assistant
Secretary issues an order under § 458.503(b) for compliance with the
Standby Plan, and shall repeat the offer every two years thereafter until January 1, 1990.

(2) Participating building heating suppliers. Each participating building heating supplier shall offer each eligible customer a CACS Standby audit no later than 90 days after the Assistant Secretary approves its participation in the Standby Plan and shall repeat the offer every two years thereafter until January 1, 1990.

(b) Conditional audit offers. The first offer of a CACS Standby audit may,
with the approval of the Assistant Secretary, be conditioned upon a nondiscriminatory factor such as serving
one geographic area at a time or serving a certain type of energy user first.
Utilities shall provide an unconditional offer within one year after a conditional
offer. Standby utilities and participating building heating suppliers which wish to
make the first offer of a CACS Standby audit conditional shall submit a request
to the Assistant Secretary in accordance with § 458.715.

(c) Content. A CACS Standby announcement must at a minimum include—

(1) An offer to perform the CACS Standby audit described in § 458.706.

(2) An explanation of how to request a CACS Standby audit.

(3) The costs, if any, of receiving the CACS Standby audit which will be—
charged directly to the customer.

(4) An explanation of how complaints of possible noncompliance with the Standby Plan may be reported to the Assistant Secretary in accordance with § 458.704(b).

(5) A notice to any customer who would be an eligible customer except for the fact that the customer's building had previously been audited by a covered utility or building heating supplier under an approved CACS State Plan or a Standby Plan. The notice must inform the customer of the availability, upon request and without charge, of the results of the previous audit and explain how to request the report.

(d) Prohibitions. (1) The CACS Standby audit announcement shall not include any advertising for the supply, installation or financing by any supplier, contractor or lender (including the regulated covered utility or participating building heating supplier) of any program measure, energy conserving operation and maintenance procedure or any other energy conserving product, unless the Assistant Secretary approves it pursuant to § 458.715. Any request submitted by a Standby utility or a participating building heating supplier under § 458.715 shall contain procedures which reasonably assure that such advertising will not be anticompetitive or unfairly discriminate against any person.

(2) Standby utilities and participating building heating suppliers are prohibited from unfairly discriminating among program measures, eligible customers, suppliers, contractors and lenders when providing information under this section.

§ 458.706 CACS Standby audit.

(a) Timing of CACS Standby audit.

(1) Unconditional offers. Each Standby utility and each participating
building heating supplier that first
unconditionally offers a CACS Standby audit to an eligible customer shall
provide the audit within 60 days of the customer's request.

(2) Conditional offers. Each Standby utility and each participating building heating supplier that first
conditionally offers a CACS Standby audit to an eligible customer shall
provide the audit within 60 days of the customer's request which responds to an unconditional offer.

(b) Prohibition against preconditions and discrimination. Each Standby utility...
and each participating building heating supplier is prohibited from—

(1) Requiring any preconditions for providing a CACS Standby audit to an eligible customer, except as provided in paragraph (d)(3) of this section; and

(2) Discriminating unfairly among eligible customers in providing CACS Standby audits.

(c) Condition for receiving a CACS Standby audit of an apartment building.

Each Standby utility and each participating building heating supplier shall require an eligible customer to certify, as a condition for receiving a CACS Standby audit of an apartment building, that the customer agrees to provide to each tenant, in a timely manner, the information relevant to individual apartment units included in the audit pursuant to paragraph (e)(5) of this section.

(d) Content of a CACS Audits.

(1) Each Standby utility and each participating building heating supplier shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, an on-site audit which addresses all the program measures in §458.104, any measures added under §458.707(a) and all the operation and maintenance procedures in §458.103, except as provided in paragraph (d)(3) of this section and §458.707(b).

(2) Each Standby utility and each participating building heating supplier shall use CACS Standby audits which have been validated by DOE or by the utility. Procedures for validating audits must be in accordance with those set out in CACS Audit Validation Procedures, Appendix II.

(3) The auditor shall determine in each CACS Standby audit the applicability of each program measure to the audited building based on the DOE applicability criteria in Appendix I to this part. A Standby utility or a participating building heating supplier may develop its own applicability criteria or modify the DOE applicability criteria and submit the new or modified criteria to the Assistant Secretary for approval in accordance with §458.715. The utility shall include in its submission a description of the basis and purpose for the additional or different applicability criteria.

(e) CACS Standby audit results.

(1) Each Standby utility and each participating building heating supplier shall provide the following information to each eligible customer who receives a CACS Standby audit:

(i) A report of the type, quantity, and rate of energy consumption of the audited commercial building or apartment building;

(ii) Identification and explanation of the energy conserving operation and maintenance procedures defined in §458.103, which would be appropriate for the audited building, together with an estimate to the extent feasible of the energy savings expressed in units of energy and in dollars or a range of dollars, to result from the application of each of these procedures;

(iii) A report on the need, if any, for the purchase and installation of program measures included in the audit pursuant to §458.104 and §458.707 together with:

(A) An estimate of the total cost expressed in dollars or a range of dollars, of the purchase and installation of each program measure included in the audit (except caulking and weatherstripping).

(B) An estimate of the first year energy savings expressed in units of energy and in dollars or a range of dollars, resulting from the installation of each program measure included in the audit.

(iv) An explanation of how to find more specific information on the purchase, financing and installation of program measures and information on other commercially available audit services; and

(v) In the case of a CACS Standby audit of an apartment building, information developed by the audit relating to operation and maintenance procedures and program measures which is applicable to individual apartments.

(2) If a Standby utility or a participating building heating supplier does not provide results of CACS Standby audits in person, it shall give the customer an opportunity to discuss the results of the audit with a qualified person.

(f) Submissions. Each Standby utility and each participating building heating supplier shall submit to the Assistant Secretary the following information in accordance with §458.715:

(1) The audit validation procedures for each measure as described in paragraph (d)(2) of this section; unless the audit has been validated previously by DOE.

(2) The informational brochure or material to be provided to tenants in apartment buildings in accordance with paragraph (e)(5) of this section.

(g) Prohibitions. (1) Unless approved by the Assistant Secretary pursuant to §458.715, an auditor is prohibited from estimating, as part of a CACS Standby audit, the energy and cost savings of installing any product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor or lender who supplies, installs, or finances the sale or installation of program measures.

(3) A Standby utility or a participating building heating supplier is prohibited from unfairly discriminating among program measures or eligible customers.

3) §458.707 Adding and/or deleting measures.

(a) A Standby utility or a participating building heating supplier may only add measures to the program measures listed in §458.104 for the Standby audit, with the approval of the Assistant Secretary, if:

(1) The measure has a payback (P) of 7 years or less when the installed first cost (F) of the measure minus any applicable Federal and State tax credits (T) is divided by the first year energy savings in dollars (S).

\[ P = \frac{F - T}{S} \]

(2) A replacement measure replaces an existing measure of the same fuel type, and

(3) The measure meets the criteria in Appendix I.

(b) A Standby utility or a participating building heating supplier may only exclude a program measure listed in §458.104 from its CACS Standby audit, with the approval of the Assistant Secretary, if, when utility or building heating supplier derived data is used to determine the measure payback period, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) of the measure, less any applicable Federal and State tax credits (T), by the first year energy savings in dollars (S).

\[ P = \frac{F - T}{S} \]

(c) In accordance with §457.715, the utility or building heating supplier shall provide the Assistant Secretary with data to document each element in the formula in (a) or (b) above to support any proposed addition or exclusion of program measures under paragraphs (a) or (b) of this section.

(d) The utility or building heating supplier shall define any measures it proposes to add in accordance with §458.715.
§ 458.708 Auditor qualifications.

(a) Each Standby utility and each participating building heating supplier shall provide an adequate number of auditors for the CACS Standby program who have successfully completed an auditor training program approved by DOE. The training program shall address the following auditor qualifications:

(1) A general understanding of commercial and apartment building construction, particularly a knowledge of the heating and cooling systems, heat transfer and related environmental effects, the different types and applications of Program measures and any relevant State installation standards;

(2) The capability to conduct the audit including:

(i) A familiarity with the Program measures and O&M procedures;

(ii) The ability to use the applicability criteria to determine which Program measures to evaluate;

(iii) A proficiency in pertinent auditing procedures for each applicable Program measure;

(3) A general knowledge of utility rates.

(b) Specifically, the audit work force shall have:

(i) A working ability to calculate or determine the steady state efficiency of a furnace or boiler;

(ii) A general knowledge of pneumatic, electrical and mechanical control systems and their applicability to automatic energy control systems;

(iii) An understanding of the inter-relationship between the various loads in the eligible building population including the ability to anticipate the corresponding effect on one load of changes to the other;

(iv) A general knowledge of lamps and lighting systems used in commercial and multifamily buildings;

(v) A general knowledge of the functions and operating characteristics of steam systems in commercial and apartment buildings, as well as the various types and symptoms of steam system failure; and

(vi) An understanding of automatic energy control systems and the relationships among the occupants, the structure and the mechanical and lighting systems (energized systems).

(c) Auditors shall have general knowledge of the nature of solar energy and its applications.

(d) Paragraph (a) of this section does not apply to any auditor who has performed audits in accordance with a DOE approved State CACS plan or who has conducted on-site audits which conform to the requirements of § 458.709.

§ 458.709 Ongoing programs.

(a) The Assistant Secretary shall have the discretion to allow a Standby utility which is currently complying in good faith with a DOE approved CACS State Plan to continue to operate under the provisions of that plan, even though the State lead agency has relinquished or been relieved of its responsibilities. A utility which meets this criterion may submit a request to the Assistant Secretary in accordance with § 458.715.

(b) The Assistant Secretary shall have the discretion to allow a Standby utility which is currently operating under a DOE approved CACS program in another State to operate a similar program in the State for which the Standby order under §458.305(b) has been issued. A utility which meets this criterion may submit a request to the Assistant Secretary in accordance with § 458.715.

(c) If the Assistant Secretary shall treat costs as described below and shall notify any eligible customers who have requested a Standby audit and shall refer the customers to the appropriate Standby utility in the same service area.

§ 458.710 Participating building heating suppliers.

(a) Participation. (1) Any building heating supplier in a State for which a Standby order has been issued may participate in the Standby Plan in the State.

(b) Waiver of requirements. (1) Except as provided in paragraph (b)(2) of this section, a participating building heating supplier may request in writing from the Assistant Secretary a waiver of any requirement of the Standby Plan on the basis of limited resources.

(2) The Assistant Secretary will not waive the following requirements for any participating building heating supplier:

(i) Section 458.704 (Procedures for investigating and enforcing compliance with the Standby Plan).

(ii) Section 458.706(g) (Prohibitions for a Standby audit).

(c) Withdrawal. (1) Any participating building heating supplier may voluntarily withdraw from the Standby Plan by submitting a written notice to the Assistant Secretary.

(2) Prior to withdrawing, the participating building heating supplier shall notify any eligible customers who have requested a Standby audit and shall refer the customers to the appropriate Standby utility in the same service area.

§ 458.711 Accounting and payment of costs.

(a) Accounting. All amounts expended or received by a Standby utility which are attributable to the CACS Program, including any penalties paid under Subpart E of this part (Federal Standby Authority), shall be accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility.

(b) Payment of costs. Standby utilities shall treat costs as described below and shall notify the Assistant Secretary how the costs described in paragraph (b)(2) of this section will be treated in accordance with § 458.715.

(1) All amounts expended by a utility for the CACS Standby announcement and all public education and program promotion directly related to providing information about the CACS program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility in the same manner as other current operating expenses of providing such utility service.

(2) The State Regulatory Authority shall specify the manner in which all other program costs will be recovered, except that the amount that may be charged directly to the owner of an apartment building for whom a CACS Standby audit is performed pursuant to
§ 458.709 must not exceed a total of $15 per apartment in the building or the actual cost of the CACS Standby audit, whichever is less, and there may be no charge for a report of a previous audit.

(3) In determining the amount to be charged directly to eligible customers as provided in paragraph (b)(2) of this section, the State Regulatory Commission shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the program which will result from such charge.

§ 458.712 Customer billing.

Every charge to an eligible customer by a Standby utility or by a participating building heating supplier for any portion of the costs of carrying out a CACS Standby audit that is charged to the eligible customer for whom the audit is performed, and that is included on a bill for utility or fuel service submitted by the utility or building heating supplier, shall be stated separately from the cost of providing utility or fuel service. (Nothing in this paragraph shall be construed to require that charges for a CACS Standby audit must be included on a periodic utility or fuel bill.)

§ 458.713 Coordination.

The Assistant Secretary shall contact annually the appropriate Federal, State, and local officials responsible for energy conservation programs within and affecting a State for which a CACS Standby order has been issued.

§ 458.714 Reports and recordkeeping.

(a) Each Standby utility and each participating building heating supplier shall submit a report to the Assistant Secretary no later than six months after the date of approval of all information submitted in accordance with § 458.715. Each utility and building heating supplier shall submit an annual report no later than each July 1 thereafter, unless the initial six months report is required to be submitted less than 90 days prior to July 1, in which case the first annual report shall be submitted the following July 1.

(b) Each report must include the following information, as indicated:

(1) The approximate number of eligible customers;
(2) A copy of the CACS Standby announcement, if not previously submitted;
(3) The number of CACS Standby announcements distributed, including the number of those making conditional audit offers;
(4) The number and type of CACS Standby audits requested and provided for commercial building and multifamily buildings separately;

(5) The estimated costs of implementing the CACS program during the reporting period including revenues received for providing audit service; and
(6) The number and description of complaint received.

(c) Each regulated covered utility subject to the CACS Standby Plan and each participating building heating supplier shall keep a copy of each Standby audit report for 10 years from the date of the audit and shall make such reports available to the Assistant Secretary, upon request.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as deemed essential to DOE's responsibilities under the CACS program:

(1) Require additional information; or
(2) Waive any reporting and recordkeeping requirements, except the requirements of paragraph (c) of this section.

[Approved by the Office of Management and Budget under OMB Control Number 1910-3400.]

§ 458.715 Information to be submitted to the Assistant Secretary.

(a) Required submittals. Each regulated covered utility subject to the CACS Standby Plan and each participating building heating supplier shall submit the following to the Assistant Secretary for approval before carrying out this plan:

(1) A copy of the CACS Standby announcement.
(2) A copy of the information developed pursuant to § 458.706(e)(1)(v) to be given to apartment building customers as part of the audit results;
(3) Qualification procedures for auditors, a description of all training materials, and a timetable for implementing training procedures, as required by § 458.706(c), as well as the number of full-time auditors which will be qualified to conduct audits; and
(4) Information on how program costs shall be treated, as required by § 458.711.

(b) Optional submittals. Any Standby utility or participating building heating supplier may submit information relating to the following to the Assistant Secretary for approval:

(1) If conditional audit offers are to be given in the first round of Standby announcements, pursuant to § 458.706(b), a description of the conditions that are to be used;
(2) If advertising is to be included in the Standby announcement, pursuant to § 458.706(d)(1), a description of the type of advertising to be allowed, and the procedures developed to assure that the advertising will not result in any anticompetitive activity.

(3) If different applicability criteria other than those set forth in Appendix I are to be applied during the audit, a description of the applicability criteria must be submitted including documentation which justifies and explains the changes.

(4) If additions or deletions to the list of program measures set forth in § 458.104 are to be made, the utility must submit adequate documentation incorporating the requirements of § 458.707. Documentation includes the source of each element in the following formula:

\[ P = \frac{F - T}{S} \]

and an explanation of all assumptions used. The calculation or algorithm for S (first year energy savings in dollars) must be included. If measures are added, a definition of the new measures must be included.

(5) The utility must validate its audit procedures in accordance with the requirements set out in Appendix II. Calculation procedures for all CACS measures (unless deleted in accordance with § 458.707) must be validated for both multifamily buildings that are centrally heated or cooled or centrally metered (for gas or electricity), and small commercial buildings. In order to properly verify the energy savings for CACS measures, the validation should first address a breakdown of energy end uses, i.e., heating, cooling, fan, lighting, hot water, other by fuel type. Typically only one fuel will be used for a particular end use.

(6) The audit validation submittal forms in Appendix II consist of: (i) A cover sheet describing the utility and contact person, and (ii) a list of the required information and format that must be submitted for each energy end use or group of end uses and for each measure or group of measures. Chapter titles, equation and page numbers, sections of computer codes, etc. must be cited for each reference as it applies to each measure.

(7) If audits performed in an ongoing audit program for commercial or apartment buildings meet the requirements in § 458.105, and the utility wishes these audits to qualify as CACS audits, the utility shall submit the following in lieu of the information requested in (b) (6) of this section:
(including a list of program measures included in the audit and a description of the procedures used to validate the audit.

(Approved by the Office of Management and Budget under OMB Control Number 1910-1460)

Appendix I: Program Measure Applicability Criteria

I. A program measure is applicable to a building if:
   (a) The measure is not already present in good condition and the potential exists to save energy and/or reduce energy demand in the building by installing it. A replacement measure is applicable only if a less efficient device performing the same function, which is more than 2 years old, is already present in the building.
   (b) Installation of the measure is not a violation of Federal, State or local law or regulations.
   (c) Energy recovery systems (when waste heat from an air conditioner is used to assist in heating water) are applicable if:
      • The building uses at least 50 gallons of hot water per day.
      • The building has a source of waste heat of 3400-5800 Btu/hour (e.g. the equivalent of waste heat from a two-ton air conditioner); and
      • The building is located in an area with more than 2000 cooling degree days.
   (d) Furnace flue opening modifications are applicable if the furnace combustion air is taken from a conditioned area.
   (e) Ceiling insulation is applicable if the differential between the existing insulation and the insulation level recommended by ASHRAE 60-60 exceeds R-11.
   (f) Lighting system modification to use daylighting is applicable if any electric lighting fixtures are located within 15 feet of an existing window or skylight in a commercial building or in common areas of an apartment building.
   (g) Passive Solar heating thermosyphon air systems are applicable if the building has a south-facing (+ or -45° of true south) wall free of a major obstruction to sunshine during the heating season.
   (h) Solar domestic hot water systems are applicable if the building consumes more than 50 gallons of hot water per day and has access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented + or -45° of true south.
   (i) Solar/unspace systems are applicable to an apartment building if it has existing balconies, patios or available adjacent ground area on the south-facing (+ or -45° of true south) wall. Solar/unspace systems are not applicable to commercial buildings.
   (j) Swimming pool heater replacements are applicable only for apartment buildings and only if the pool uses electricity or other nonrenewable energy for heating.
   (k) Window heat gain retardants are applicable to buildings which have glass on the south, east or west sides if they are exposed to sunlight.
   (l) Pipe and duct insulation is applicable to hot water pipes and to heating and cooling ducts which extend through unconditioned spaces.

Appendix II: CACS Audit Validation Procedures

Each Standby Utility must provide the following information:

CACS AUDIT VALIDATION SUBMITTAL

Cover Sheet

Name of Organization:

Contact Person:

Title:

Phone Number:

Address:

*Please provide the name of the person who can answer specific engineering questions about the audit procedure.

Required Information

Each Standby utility must submit the following information for each energy end use and OACS program measure included in the audit it intends to use.

Energy End Use or Measure Name:

Differences Between Small Commercial and Multifamily Audits:

Methods and References Used for Validation of Each Energy End Use or Measure:

(Include title, author, chapter, page numbers, etc. of each reference used)

Editorial Note.—The definitions in the following appendix will not appear in the Code of Federal Regulations. They are found in §§ 458.192-458.194 and are reprinted here for the convenience of the reader.

Appendix III: CACS Definitions

Definitions—General

"Apartment Building" means a building which is used for residential occupancy, was completed on or before June 30, 1950, contains five or more apartments and uses any of the following: a central heating system, a central cooling system, a central meter for the heating or cooling system. The Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy of the U.S. Department of Energy. "Commercial and Apartment Conservation Service (CACS) Program" means the audit program which this part requires each covered utility and covered building heating supplier to implement pursuant to an approved State Plan, an approved Nonregulated Utility Plan, or a Federal Standby Plan. "Commercial Building" means a building—

(a) Which was completed on or before June 30, 1980; or
(b) Which is used primarily for carrying out a business [including a nonprofit business] or for carrying out the activities of a State or local government.

"DOE" means the United States Department of Energy. "Eligible Customer" means any of the following:

(a) With respect to a covered utility, the owner or tenant of a commercial building or the owner (or the owner's agent) of an apartment building to whom the covered utility sells electricity or natural gas, for use in the building and who is the utility customer of record; or
(b) With respect to a building heating supplier, the owner or tenant of a commercial building or the owner (or the owner's agent) of an apartment building to whom the building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in the building and who is the supplier's customer of record.

"Federal Building" means any building or other structure owned in whole or part by the Federal Government or by a foreign government upon which Federal agencies have the right to place Federal Government equipment or facilities.

"Federal Building" means any building or other structure owned in whole or part by the Government of the United States or a Federal agency, including any structure occupied by a Federal agency under a lease or other agreement under which the United States or a Federal agency will receive fee simple title under the terms of the agreement without further negotiations.

*Which is not used primarily for the manufacture or production of products, raw materials, or agricultural commodities.

Which is not a Federal building.

For which the average monthly use of energy for calendar year 1920 (or the latest twelve month period for which information is readily available) was less than the following:

(1) 4,000 kilowatt-hours of electricity, unless it is determined that the building exceeds the average monthly use prescribed in either paragraph (a) or (b) or (c) of this definition.

(2) 1,000 therms of natural gas, unless it is determined that the building exceeds the average monthly fuel use prescribed in either paragraph (a) or (b) or (c) of this definition.

(f) For which the average monthly use of energy for calendar year 1920 (or the latest twelve month period for which information is readily available) was less than the following:

(1) 4,000 kilowatt-hours of electricity, unless it is determined that the building exceeds the average monthly use prescribed in either paragraph (a) or (b) or (d) of this definition.

(2) 1,000 therms of natural gas, unless it is determined that the building exceeds the average monthly fuel use prescribed in either paragraph (a) or (b) or (c) of this definition.
"Governor" means the Governor or chief executive officer of a State or the Governor's designee.

"Lead Agency" means a State agency authorized by law or designated by the Governor to develop and submit a State Plan.


"Nonregulated Utility" means a public utility which is not a regulated utility.

"Nonregulated Utility Plan" means a plan developed pursuant to Subpart D of this part.

"Program Information" means the audit announcement and any information dissemination activities related to a CACS Program.

"Public Utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both, for use in commercial buildings or apartment buildings.

"Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any rate, charge or classification and any contract pertaining to the sale of electric energy or natural gas.

"Ratemaking Authority" means authority to fix, modify, approve, or disapprove rates.

"Regulated Utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

"Secretary" means the Secretary of Energy.

"State" means a State, the District of Columbia, and Puerto Rico.

"State Agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

"State Plan" means a plan developed pursuant to Subpart C of this part.

"State Regulatory Authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency), except that in the case of a public utility which to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

"TVA" means the Tennessee Valley Authority.

Definitions—Energy Conserving Operation and Maintenance

"Energy Conserving Operation and Maintenance Procedures" means changes in the operation or maintenance of a commercial building or an apartment building which are designed primarily to reduce energy consumption in the building including those which are defined as follows:

"Air Conditioner Efficiency Maintenance" means periodic cleaning and/or modification of an installation which is designed to reduce the consumption of petroleum, natural gas, or electrical power in an apartment building or commercial building, including those which are defined as follows:

"Air Conditioner Efficiency Maintenance" means periodic cleaning and/or replacement of air filters and cleaning of coils on forced air cooling systems.

"Conditioned Space Reduction" means closing off unoccupied areas, and/or reducing the heating and cooling supply to these areas.

"Efficient Use of Shading" means using existing shades, drapes, awnings, and other methods—

(a) To block sunlight from entering a building in the cooling season; or
(b) To allow sunlight to enter a building during the heating season; or
(c) To cover windows at night during the heating season.

"Furnace Efficiency Maintenance and Adjustment" means cleaning and/or modification of an installation which is designed to reduce the consumption of the same fuel type and which, because of its design, achieves a reduction in the amount of fuel used from the furnace or boiler (including the combustion equipment) and which, because of its design, achieves a reduction in the amount of oil used from the furnace or boiler (including the combustion equipment).

"Replacement Furnace or Boiler" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and provides reduced fuel consumption due to an increase in efficiency.

"Steam Distribution System Maintenance" means the inspection of the visible steam distribution system for the purpose of detecting steam leaks during that steam is not entering the condensate system and that condensate return lines return all condensate to the boiler where practical and desirable.

"Temperature Reduction in Summer" means raising the thermostat or other temperature control for occupied space to as high a temperature as reasonable during the cooling season. The temperature of space that is not continuously occupied may be allowed to rise further than that of occupied space.

"Temperature Reduction in Winter" means lowering the thermostat or other temperature control for occupied space to as low a temperature as reasonable during the heating season. The temperature of space that is not continuously occupied may be allowed to rise further than that of occupied space.

"Water Flow Reduction" means reducing the hot water flow to showers or other water closets to as low as reasonable by the use of any practical or feasible method.

"Water Temperature Reduction" means turning the hot water heater off or manually setting back the heater thermostat temperature to as low a temperature as practical, consistent with the needs for hot water.

Definitions—Program Measures

"Program Measure" means an installation or modification of an installation which is designed to reduce the consumption of petroleum, natural gas, or electrical power in an apartment building or commercial building, including those which are defined as follows:

"Automatic Energy Control System" means devices and associated equipment which regulate the operation of heating, cooling or ventilating equipment based on time, inside and/or outside temperature or humidity, or utility load management considerations in order to reduce energy demand and/or consumption.

"Conditioned Space Reduction" means pliable materials used to reduce the passage of air and moisture by filling small gaps such as around window and door frames, around unsealed glass panes, at fixed joints on a building, underneath baseboards inside a building, at electrical outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

"Energy Recovery Systems" means equipment designed primarily to recover building waste energy from sources such as refrigeration or air conditioning for some useful purpose such as heating water.

"Furnace, or Utility Plant and Distribution System Modifications" means installation of the devices or components which are defined as follows:

(a) "Intermittent Pilot Ignition Device (IID)" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the pilot or burner and replaces a continuously burning pilot light.

(b) "Flue Opening Modification (Vent Damper)" means an automatically operated damper installed in gas-fired or oil-fired furnace or boiler which

(1) Is installed downstream from the draft hood or barometric damper; and

(2) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(c) "Replacement Burner (Oil or Gas)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel air mixture as an integral part of an oil-fired furnace or boiler (including the combustion chamber and oven) and installation of the devices or components which are defined as follows:

(1) The term "Replacement Burner (Oil)" includes a device which reduces the rate of flow of heated air through the draft hood or barometric damper and replaces a continuously burning pilot light.

(2) The term "Replacement Burner (Gas)" means a device designed for installation in an existing gas-fired boiler which uses fan and control mechanisms to supply and control combustion air to achieve an optimal fuel to air ratio for maximum gas combustion efficiency and which, because of its design, achieves a reduction in the gas used from the amount of gas used by the device which it replaces.

(d) "Replacement Furnace or Boiler" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and provides reduced fuel consumption due to higher energy efficiency of the heating system.

(e) "Distribution System Modifications" means modifications to an energy distribution system and associated components that increase the energy efficiency, such as:

(1) Improved flow control devices;
(2) Improved pipe or duct routing to reduce pressure drop and/or heat losses;
(3) Flow balancing mechanisms; or
(4) Point of use water heaters of the same fuel type.

"Insulation" means installation within a building or apartment of a material primarily designed to resist heat transmission in one of the following ways:

(a) "Ceiling Insulation" is installed between the conditioned area of a building and unconditioned space beneath the roof. When the conditioned area of a building extends to the roof, the term "ceiling insulation" applies to material used on the exterior of the roof.

(b) "Duct Insulation" is installed on heating or cooling supply and return ducts in an unconditioned area of a building such as the space above dropped ceiling.

(c) "Floor Insulation" is installed between the lowest conditioned level of a building and a lower unconditioned level. For a structure with an open crawl space, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(d) "Pipe Insulation" is installed on hot or cold fluids for space conditioning purposes; or

(e) "Wall Insulation" is installed within or on exterior walls of a building.

(f) "Water Heater Insulation" is wrapped around the exterior surface of the water heater casing.

"Lighting Systems Replacement or Modification" means devices and actions which reduce overall lighting energy consumption and/or demand while maintaining satisfactory lighting levels. These devices and actions include:

(a) Reducing light levels to levels cited in existing applicable guidelines in each area of the building. This action may include installation of task lighting and reduction of overhead task lighting;

(b) Controlling lamp operating time to limit lighting operation to periods of area use. Installation of local manual switching, time control devices and space use cordinig devices is included;

(c) Replacement of lamps with more efficient sources. These devices and actions may include, but are not limited to, replacement of incandescent and fluorescent lighting with luminequivalent low energy lamps, replacement of old fluorescent lighting ballasts with new electronic ballasts, or replacement of any fixture type with one of greater lumens per watt efficiency such that total lighting demand can be reduced; and

(d) Use of "Daylighting" by automatically switching off electric lights in areas where satisfactory lighting levels can be maintained using either existing windows or skylights in a commercial building or a common area of an apartment building.

"Passive Solar Space Heating and Cooling Systems" means systems that make the most efficient use of, or enhance the use of natural forces—including solar irradiation, winds, night time coolness, and the opportunity to lose heat by irradiation to the night sky—to heat or cool space by the use of conductive, convective, or radiant energy transfer. "Passive solar systems" include but are not limited to:

(a) "Thermosyphon Air System" which means a solar day time heater attached to the south-facing (+45° of true south) wall of a building which operates either through natural convection or through use of a fun of low power to draw air from near the floor, exposes the air to be a solar-heated surface, and discharges heated air near the ceiling, and which is able to be closed off from the conditioned area at night and on cloudy days.

(b) "Solaria/Sunspace System" which means an enclosed structure of glass, fiberglass, or similar transparent material attached to the south-facing (+45° of true south) wall of a structure which absorbs solar heat and utilizes air circulation to bring this heat into the building and which is able to be closed off from the structure at night and on cloudy days.

"Solar Domestic Hot Water Systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a structure other than for space heating, including solar thermosyphon hot water heaters.

"Solar Replacement Swimming Pool Heater" means a device which is used solely for the purpose of using the sun's energy to heat swimming pool water and which replaces a swimming pool heater using electricity, gas, or other fossil fuel.

"Weatherstripping" means narrow strips of material placed over or in movable joints or windows and doors to reduce the passage of air and moisture.

"Window and Door System Modifications" include the measures defined as follows:

(a) "Storm Window" means a window or glazing material placed outside or inside a prime window, creating an insulating air space, to provide greater resistance to heat flow than the prime window alone.

(b) "Thermal Window" means a window with improved thermal performance through the use of two or more sheets of glazing materials affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(c) "Storm or Thermal Door" means—

(1) A second door, installed outside or inside a prime door, creating an insulating air space;

(2) A door with enhanced resistance to heat flow through the glass area, constructed by affixing two or more sheets of glazing material;

(3) A prime exterior door with an R-value of at least 2; or

(4) A door that is designed to minimize air exchange during operation, including revolving doors, and double doors with a foyer.

(d) "Glazing Heat Gain/Loss Retardants" means those fixtures such as insulated shades, drapes, or movable rigid insulation, awnings, external rollup shades, metal or fiberglass solar screens, or heat absorbing films which significantly reduce summer heat gain through windows and doors.

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Part V

Department of Transportation

Office of the Secretary

14 CFR Part 385
Assignment of Certain Aviation Economic Functions; Interim Final Rule, Request for Comments

49 CFR Part 1
Organization and Delegation of Powers and Duties; Transfer of Civil Aeronautics Board Functions; Final Rule
DEPARTMENT OF TRANSPORTATION
Office of the Secretary

14 CFR Part 385
[Docket No. T-1]
Assignment of Certain Aviation Economic Functions

AGENCY: Office of the Secretary (OST), DOT.
ACTION: Interim final rule, request for comments.

SUMMARY: This interim final rule reissues, in a new form, the Civil Aeronautics Board (CAB) rule dealing with the delegation of numerous discretionary authorities needed to carry out titles IV and X of the Federal Aviation Act of 1958, as amended, and related statutes (the Act). These functions are transferred to the Department of Transportation on January 1, 1985, pursuant to 49 U.S.C. 1551(b) and 1552 and section 4 of the "Civil Aeronautics Board Sunset Act of 1984" (Pub. L. 98-443, Oct. 4, 1984). Substantive modifications of the assignments and review procedures currently set forth in Part 385 by the CAB are not being made, except for elimination of references to functions that are no longer or will no longer be carried out under the Act. Rather, this rule makes changes to reflect the different organizational structure at DOT: Primary delegations of the basic authorities being transferred from the CAB to DOT Secretarial Officers and the Research and Special Projects Administration (RSPA) Administrator are published elsewhere in today's Federal Register.

DATES: Effective Date: This rule is effective on January 1, 1985. Comments on this rule must be received on or before April 1, 1985.

ADDRESS: Comments should be submitted to the Docket Clerk, Room 10424, Office of the Secretary, Department of Transportation, 400 Seventh St. SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Warren Dean, Assistant General Counsel for International Law (202) 426-2418, or Vance Fort, Director, Special Programs, Office of the Assistant Secretary for Policy and International Affairs, (202) 426-2434, Department of Transportation, 400 Seventh St. S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:
Invitation for Comments
Interested persons are invited to comment on this interim rule by submitting such written data, views, or arguments as they may desire. All comments received on or before the closing date for comments will be considered by the Secretary before finalizing the interim rule. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons from 9:00 a.m. to 5:00 p.m. Monday through Friday, except for federal holidays. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No.—-" The postcard will be date/time stamped and returned to the commenter.

Background

The Airline Deregulation Act of 1978 (ADA) mandated regulatory reform for the airline industry. As part of the regulatory reform process, the ADA, along with the "Civil Aeronautics Board Sunset Act of 1984", provides for the sunset of the Civil Aeronautics Board (CAB) and the transfer to other agencies, effective January 1, 1985, of those CAB functions that are to continue. These functions transfer to DOT, with the exception of most domestic postal rate-setting, which transfers to the United States Postal Service. Elsewhere in today's Federal Register, DOT has published delegations by the Secretary to Secretarial officers and the RSPA Administrator of the CAB authority transferring to DOT on January 1, 1985.

This rule builds on these delegations to Secretarial officers and RSPA by detailing assignments to the DOT staff members who will execute certain of the more routine functions needed to fulfill the purposes of the Act on a day-to-day basis. Part 385 of the CAB's regulations (Title 44, Chapter II, of the Code of Federal Regulations) already fulfills this purpose, and DOT in this rule is reissuing the current Part 385, effective as of January 1, 1985, but with changes needed to reflect the organizational structure of DOT and its operating administrations, to convert delegations into "assignments of duties", and for technical correction to omit reference to functions that have ceased or will cease through CAB sunset. Substantive change in the types of assignments and rights of review currently found in Part 385 is not intended, with the exception of the elimination of staff delegations relating to domestic antitrust authority.

The vast majority of changes being made by this rule are merely technical, conform the regulation to the DOT organization, and do not require explanation. Several of the changes do merit discussion, however.

1) Inclusion of RSPA. To maintain continuity with the current Part 385, this rule will address activities both within OST and in the separate RSPA organization. RSPA will succeed to the aviation information gathering function now being carried out by the CAB Comptroller (see current 14 CFR 385.27).

In order to promote further continuity, subsections of Part 385 that are not needed because of changes have not been deleted, so that current CAB numbering of subsections remains in place as much as possible. To accomplish this, unused subsections are marked "Reserved ."

2) Assumptions in making revisions. For the purposes of this rule, it is assumed for the most part that the CAB Economic Regulations and Procedural Regulations remain unchanged at their transfer to DOT. In fact, the "Civil Aeronautics Board Sunset Act of 1984" contains a savings provision (sec. 12) that explicitly provides for continuity of these regulations. Accordingly, this rule contains few changes to the cross-references in Part 385 to the CAB's other regulations. As a practical matter, revisions are needed to the body of CAB regulations and are in the process of being made. Appropriate adjustment of cross-references will be made in a renewed issuance of this rule or in conjunction with the issuance of other final rules amending 14 CFR Chapter II that are issued by DOT.

Another consequence of the section 12 savings provision is to continue at DOT CAB rulings and other precedents referred to extensively in Part 385. While the vast majority of applicable judicial and CAB precedents are consistent with DOT policy and can continue to be relied upon, a definition of "precedent" has been included in this rule that would have the effect of excluding those precedents that are inconsistent with DOT policy.

3) Definition of "Reviewing Official". One new definition added to Part 385 is that of "Reviewing Official": This term refers to senior Department officials to whom the Secretary delegates final authority to carry out portions of the Act. The Assistant Secretary for Policy and International Affairs, the Assistant Secretary for Governmental Affairs, the Assistant Secretary for Administration, the RSPA
This new term is useful in revising the aspect of Part 385 that deals with discretionary review of staff-level actions that have been assigned under Part 385. Currently, the Board itself exercises this authority at the CAB, but the Secretary personally would not exercise such authority in the normal course at DOT. The senior DOT officials listed above would ordinarily exercise this authority, consistent with the delegation of final authority to them and the further assignment of duties to lower staff levels by means of Part 385. Comments on the usefulness of the definition and the approach are specifically invited.

4. "Applicability" paragraph (§ 385.6). Current wording of this paragraph suggests that Part 385 is primarily descriptive of Board assignments made elsewhere. The words "herein or elsewhere" are therefore being added to this paragraph to make clear that actual authority is being assigned in this regulation. Also, a sentence is added that refers the reader to the official delegations of title IV and X functions by the Secretary to senior DOT officials in 49 C.F.R. Part 1.

5. "Exercise of Authority by Superiors" (§ 385.7). This paragraph is being revised to make clear that the assignments of duties to various DOT officials does not interfere with the normal management principle that superiors may act for those they supervise.

6. Effective date paragraph (§ 385.9). This section of Part 385 is being deleted, consistent with DOT's practice of treating the effectiveness of its rules as a matter separate from the text of the rule itself.

7. Delegations concerning public availability of information, filing and other fees, and related authority (§§ 385.12, 385.24, 385.25, 385.30). The current assignments to the CAB Managing Director, Board Secretary, and Director of Personnel under Part 385 are being deleted. A comparable assignment to the Office of Community and Consumer Affairs appears at § 385.30(b) and is also being deleted. They are all descriptive of Board and the public. DOT has a rule that systematically treats this type of matter (49 C.F.R. Part 7), and it expects to revise that Part, as necessary, to assign the authority treated in §§ 385.12, 385.24, 385.25, and 385.30. It is noted that comparable authority reserved to the Deputy General Counsel in enforcement proceedings is not being deleted from § 385.22, because of the need to keep this activity independent. It is further noted that parallel changes will be required in Part 389 of current CAB regulations, which prescribes fees and charges for special services.

8. Consolidation of BDA and BIA assignments. This rule consolidates, and deletes duplication among, the functions of the Bureau of Domestic Aviation and the Bureau of International Aviation. This is being done because a single Office of Aviation Operations at DOT will succeed to many of the remaining activities of the two CAB Bureaus. Accordingly, major portions of §§ 385.26 and 385.28a are being transferred to § 385.13. Certain "fitness" and "Public Convenience and Necessity" certificate functions carried out in the CAB's General Counsel's Office are being transferred to the Office of Aviation Operations.

9. Essential Air Service. The Department is establishing a separate new program office to administer the Essential Air Service (EAS) program. This office will report directly to the Secretary for administrative purposes, but its program decisions will be reviewed by the Assistant Secretary for Policy and International Affairs, pursuant to Secretarial delegation. These actions are reflected in the various changes made in §§ 385.14, 385.14a, and 385.14b.

Regulatory Evaluation and Regulatory Flexibility Act Determination

This rule has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Polices and Procedures, dated February 28, 1979. The rule is not considered to be "major" as defined by E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumers, individual industries, government agencies or regions, and it will not have a significant adverse effect on competition, or any other aspect of the economy. The economic impact is judged to be so minimal as not to warrant a full regulatory evaluation. I certify that this rule will not have a significant economic impact on a substantial number of small entities. It merely amends a current CAB regulation to reflect the different organizational structure under which certain non-major CAB functions will be administered after sunset at DOT. Small entities will be virtually unaffected.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 14 CFR Part 385

Organization and functions (government agencies).

The Amendment

Accordingly, 14 CFR is amended by revising the heading of Chapter II and by revising Part 385 of Subchapter E to read as set forth below.

Subpart C—Procedure on Review of Staff Action

385.27 Authority of the Office of Aviation Information Management, Research and Special Programs Administration.
385.28 Authority of the Director, Office of Administrative Operations.
385.29 [Reserved]
385.30 Authority of the Director, Office of Community and Consumer Affairs.

Subpart C—Procedure on Review of Staff Action

385.31 Persons who may petition for review.
385.32 Petitions for review.
385.33 Effective date of staff action.
385.34 Review by the staff.
385.35 Decision by the Reviewing Official.


Subpart A—General Provisions

§ 385.1 Definitions.

“Act” means the Federal Aviation Act of 1958, as amended.

“Board” means the Civil Aeronautics Board.

“Department” mean Department of Transportation.

“Petition for review” means a petition asking the appropriate Reviewing Official to exercise his or her discretionary right of review of staff action.

“Precedent” means applicable judicial decisions and decisions by the Department, or by the Board, or by the Secretary of Transportation where consistent with Department policy.

“Reviewing Official” means the Assistant Secretary for Policy and International Affairs, the Assistant Secretary for Governmental Affairs, the Assistant Secretary for Administration, the General Counsel, or the Administration of the Research, and Special Programs Administration, as appropriate to the subject matter under review, but not with regard to Deputy General Counsel and Administrative Law Judge decisions made under this part.

“Staff action” means the exercise of a function under title IV or X of the Act by a staff member pursuant to assignment under this part.

“Staff members” means officers and employees of the Department who are assigned authority under this part.

§ 385.2 Applicability.

This part describes the organization of the Department insofar as, pursuant to authority conferred on it by section 204 of the Federal Aviation Act, the Department has adopted rules herein or elsewhere which make continuing assignments of authority with respect to any of its functions of making orders or other determinations, many of which are not required to be made on an evidentiary record upon notice and hearing or which are not the subject of contest, and Department personnel have been assigned to perform such functions. Delegations by the Secretary of Transportation to Secretarial Officers and the Administrator, Research and Special Programs Administration (RSPA) of functions under titles IV and X of the Act appear in 49 CFR Part 1.

This part also sets forth the procedures governing discretionary review by the appropriate Reviewing Official of action taken under such assignments. Nothing in this part shall be construed as precluding the Department from issuing, by appropriate order, temporary delegations of authority with respect to any functions described in this part or with respect to any other functions which can be lawfully delegated.

§ 385.3 Scope of staff action.

Applications for relief which, pursuant to this part, may be granted by staff members under assigned authority, and proceedings on such requests shall be governed by applicable rules in the same manner as if no assignment had been made [see § 385.5]. In such proceedings, each staff member may determine any procedural matters which may arise, including, inter alia, service of documents on additional persons; filing of otherwise unauthorized documents; waivers of procedural requirements; requests for hearing; requests for additional information; dismissal of applications upon the applicant’s request, most applications, or incomplete or otherwise defective applications; and extensions of time. Such determination, except those which would terminate the matter, shall be subject to review only in connection with review of the staff member’s decision on the merits. The dismissal of incomplete or otherwise defective applications under authority set forth in this part shall be without prejudice except where under otherwise applicable law the time for making application has run out or where the defect is not corrected within a reasonable time fixed by the staff member. Under the authority assigned to the staff as set forth in this part to approve, disapprove, grant, or deny, relief may be granted or denied in part and grants may be made subject to lawful and reasonable conditions. Moreover, where applicable, the authority to grant relief also includes authority to renew or extend an existing authorization.

§ 385.4 Form of staff action.

Unless otherwise specified, staff action shall be by order or informal writing (letters, telegrams, decision marked on copy of application form, etc.). Such orders or informal writings shall contain a recital that action is taken pursuant to authority assigned herein, shall, in cases where there are “parties or interveners,” or where there may be an adverse effect upon a person with a substantial interest, contain a brief reference to the right of aggrieved parties to petition the Reviewing Official for review pursuant to applicable procedural rules, including a statement of the time within which petitions must be filed (§ 385.5); shall state whether the filing of a petition shall preclude the action from becoming effective; and shall be in the name of the person exercising the assigned function. They shall contain all findings, determinations and conclusions which would be required or appropriate if they were issued by the Reviewing Official. Upon request, the appropriate Department Official shall attest as Departmental action orders or informal writings issued pursuant to this part which have become the action of the Department (§ 385.5).

§ 385.5 Procedures prescribed in other regulations.

Procedures set forth in this part do not superecede procedures applicable to matters on which decision has been assigned unless otherwise specifically provided herein: Provided, however, that any provisions in other regulations which provide for reconsideration of nonhearing determinations are not applicable to decisions made under authority assigned herein or to decisions made upon review thereof by the Reviewing Official.

§ 385.6 Referral to the Reviewing Official.

When the staff member finds that the public interest so requires, or that, with respect to other than matters requiring immediate action as hereafter specified, there will be insufficient time for discretionary review of his or her decision upon petition, the staff member shall, in lieu of exercising the authority, submit the matter to the Reviewing Official for decision. In any case in which the staff member finds that immediate action is required with respect to any matter assigned herein, the disposition of which is governed by prior precedent and policy, the staff member may take appropriate action and specify that the filing of a petition for review shall not preclude such action from becoming effective.
§ 385.7 Exercise of authority by superiors.

Any assignment of authority to a staff member other than the Chief Administrative Law Judge, the Administrative Law Judge, and the Deputy General Counsel, shall also be deemed to be made, severally, to each such staff member's respective superiors. In accordance with the Department's principle of management responsibility, the superior may choose to exercise the assigned power personally. Moreover, the Secretary may at any time exercise any authority assigned herein.

§ 385.8 Exercise of authority in "acting" capacity.

Unless the assignment provides otherwise, staff members serving in an "acting" capacity may exercise the authority assigned to the staff members for whom they are acting.

Subpart B—Assignment of Functions to Staff Members

§ 385.10 Authority of Chief Administrative Law Judge, Office of Hearings.

The Chief Administrative Law Judge has authority to:

(a) Consolidate, upon recommendation of the Director, Office of Aviation Operations (or such staff member of the Office of Aviation Operations as he or she may designate), into one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

(b) With respect to matters to be decided after notice and hearing: (1) Dismiss applications or complaints (except those falling under Subpart B of Part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint. (2) Dismiss applications or complaints (except those falling under Subpart B of Part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint.

(c) Grant requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under § 302.215 of this chapter.

§ 385.12 (Reserved).

§ 385.13 Authority of the Director, Office of Aviation Operations.

The Director, Office of Aviation Operations, has authority to:

(a) Approve or deny applications of certificated route air carriers for exemptions to perform single flights outside the authority contained in their certificates.

(b) Approve, when no person disclosing a substantial interest protests, or deny applications of certificated route air carriers for exemptions to perform any other operation prohibited by a term, condition, or limitation in a certificate.

(c) Approve or deny applications of air carriers for exemptions from section 401 of the Act and from applicable regulations under this chapter where the course of action is clear under current precedent or policies.

(d) Approve, when no person disclosing a substantial interest protests, or deny applications of certificated route air carriers for exemptions to perform any other operation prohibited by a term, condition, or limitation in a certificate.

(e) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.

(f) Approve or disapprove applications of air carriers for exemption from section 403 of the Act, where grant or denial of the request is in conjunction with and incident to requests for authority under paragraph (b) of this section.

(g) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.

(h) Grant or deny requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(i) Approve or disapprove applications of air carriers for exemptions from section 403 of the Act, where grant or denial of the request is in conjunction with and incident to requests for authority under paragraph (b) of this section.

(j) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.

(k) Approve or disapprove applications for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(l) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.
to provide substitute service during the work stoppage, made under section 416(b) of the Act for temporary exemptions from sections 401, 402, or 403. The exemption or authorization shall impose conditions as necessary to comply with precedent on emergency air transportation requirements. Such applications may be approved if it is shown that the proposed service will not interfere with scheduled passengers holding reservations or scheduled or charter service, and that the proposed service is consistent with the policies set forth in Civil Aeronautics Board Order 76-4-83, dated April 14, 1979.

Exemptions and authorizations granted under this authority shall be contingent upon the actual occurrence of a work stoppage and shall expire not later than 5 days after the affected carrier resumes normal service.

(n) With respect to an application under section 401 of the Act for a certificate to engage in interstate, overseas, or foreign scheduled air transportation or to engage in interstate, overseas, or foreign charter air transportation, issue an order instituting an investigation of the applicant's fitness and other issues related to the application, where no person has already filed an objection to the application and the investigation will be conducted by oral hearing procedures.

(o) Reject any tariff, supplement, or revised page which is filed by any U.S. air carrier or by any foreign air carrier, and which is subject to rejection because it is not consistent with section 403 of the Act or with Part 221 or 222 of this chapter (Economic Regulations). Where a tariff, supplement or loose-leaf page is filed on more than 30 days' notice and is not rejected within the first 30 days commencing with and counting the filing date, it shall not be rejected after such 30-day period under this authority unless the issuing carrier or agent is given an opportunity to remove the cause for rejection by the effective date, upon Special Tariff Permission if necessary, and fails to take such corrective action.

(p) Approve or disapprove any application for permission to make tariff changes upon less than statutory notice, filed pursuant to § 221.190 of this chapter (Economic Regulations).

(q) Approve or disapprove applications for waiver of Part 221 of this chapter (Economic Regulations) in accordance with § 221.201 of this chapter.

(r) Permit cancellation of a tariff in instances when an investigation of a tariff is pending, or the tariff is under suspension, or when a complaint requesting investigation or suspension of a tariff has been filed.

(s) In instances when an investigation of a tariff is pending, or the tariff is under suspension, or where a complaint requesting investigation or suspension of a tariff has been filed, dismiss the investigation or complaint, or terminate the suspension, provided the tariff to which such investigation, complaint or suspension relates has been canceled, ordered canceled, modified so as to remove the grounds for the investigation or complaint, or has expired.

(t) Institute an investigation of, or institute an investigation and suspend the effectiveness of, a tariff or change in a tariff which:

(1) Is substantially similar to a prior tariff under investigation or suspension; and

(2) Is filed by or on behalf of one or more of the carriers party to the prior tariff; and

(3) Is filed within 90 days after the expiration, modification, or cancellation of the prior tariff, or within 90 days after the effective date of an order requiring its cancellation or modification.

(u) Extend the period of suspension of a tariff under investigation or suspension; and

(v) Grant or deny to a carrier an extension and/or one extension thereof, pursuant to section 416(b)(1), from the provisions of section 403(b) insofar as the latter section would prevent the carrier from providing free transportation for the purposes of engaging in technical in-flight observations necessary or desirable for meteorological purposes or in other cases substantially similar to cases previously acted upon by the Department or the Civil Aeronautics Board, provided that:

(1) The free transportation is limited to technical personnel regularly engaged in duties directly related to the purposes for which the free transportation is authorized and is provided only when they are engaged in the specific technical in-flight activity and does not include other transportation;

(2) The exemption or the subsequent single extension thereof shall be for a period not to exceed 6 months; and

(3) The exemption shall be granted only upon the condition that the carrier file with the Department, within 10 days after the close of each month, during which the exemption is in force, the name of each person provided free transportation thereunder, his or her company affiliation and the dates, flights, and points between which such free transportation was provided.

(w) Approve or deny applications for Special Tariff Permission filed under § 221.195 of this chapter to allow carriers to provide reduced passenger fares before filing a tariff.

(x) Issue show cause orders proposing (1) to establish service mail rates for air taxi operators, and (2) to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(y) Issue final orders establishing temporary and final service mail rates (1) in those cases where no objection has been filed following release of the show cause order, and where the rates established are the same as those proposed in the show cause order, and (2) in those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show cause order.

(z) Issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(aa) Issue a letter, in the case of air mail contracts filed with the Board under 14 CFR 302.1501 through 302.1508 against which no complaints have been filed, stating that the contract will not be disapproved by the Department and may become effective immediately. The letter shall state that it is issued under assigned authority and may be appealed to the Assistant Secretary for Policy and International Affairs by any person.

(bb) Approve or deny applications of certificated route air carriers for exemptions to serve a point certificated on one segment of its route in place of a point certificated on another section of its route whenever at least one of these points is outside the United States and no substantial competition to other lines will result.

(cc) Grant or deny applications of foreign air carriers for exemptions from section 402 of the Act and from applicable regulations under this chapter, relating to operations that are in foreign air transportation, where the course of action is clear under current precedent or policies.

(dd) Grant or deny applications for exemption from section 403 of the Act to the extent necessary to permit the performance of air carrier or foreign air carrier operations otherwise authorized by exemption granted under paragraphs (bb) and (cc) of this section.
(ee) Approve or disapprove issuance of foreign aircraft permits provided for in §§ 375.41, 375.42, and 375.70 of this chapter (Special Regulations).

(ff) Approve or disapprove interchange schedules involving points outside the United States. Approvals may be granted when such schedules appear to conform to the service plan contemplated by the Department's orders approving the basic interchange agreements.

(gg) For air carrier operations that are predominantly in foreign air transportation and for foreign air carrier operations, grant or deny applications for authorizations to conduct charter trips for which prior approval is required under (1) any provision of this chapter or (2) an order of the Department. This shall include authority to waive a time limitation for advance filing of an application prescribed in any such order.

(hh) Grant or deny applications of foreign air carriers for a change of name or for permission to use a trade name pursuant to Part 215 of this chapter.

(ii) Issue revised Exemption Orders involving service predominantly in foreign air transportation, when revisions thereof are made necessary due to a change in name of the carrier specified in the document. Provided, That no issue of substance concerning the operating authority of a carrier is involved.

(jj) Approve issuance of Special Authorizations provided for in § 216.4 of this chapter (Economic Regulations), when no person disclosing a substantial interest objects.

(kk) Issue orders directing the holders of foreign air carrier permits to show cause why the Department should not adopt provisional findings and conclusions that such permits should be canceled when (1) the government of the permit holder's home country represents that it has no objection to cancellation of the permit and (2) either (i) the permit holder has ceased operations, or (ii) the permit holder no longer holds authority from its own government to operate the routes designated in its permit.

(ll) Approve or disapprove wet leasing arrangements involving service predominantly in foreign air transportation.

(mm) Grant or deny applications of foreign air carriers for authorizations provided for in foreign air carrier permits, or for waivers of limitations contained in foreign air carrier permits, where no person disclosing a substantial interest objects, or where the course of action is clear under current precedent or policies.

(nn) With respect to air carrier authority to conduct a specific charter operation, other than a MAC operation, when the operation is predominantly in foreign air transportation:

(1) Grant or deny an air carrier such authority, imposing such conditions as exclusion of one-way passengers or limitations on payments for labor in arranging the charter; and approve or disapprove minor changes prior to flight date in charters previously authorized by order (e.g., changes regarding flight dates, departure or landing points, aircraft, persons authorized for one-way passage, intermingling of passengers, or substituting another carrier in cases of emergency).

(2) Grant or deny requests for the approval of flights.

(oo) Approve or disapprove requests by foreign air carriers for waivers of the 30-day advance filing requirement for proposed service schedules whose filing the Department has ordered under § 213.3 of this chapter.

(pp) Approve or disapprove requests by foreign air carriers for authority to operate additional flights for up to a 30-day period where an agreement, permit, or order requires prior Department approval of the flights.

(qq)(1) Approve applications for registration filed under Part 297 of this chapter, or require that a registrant under Part 297 submit additional information, or reject an application for registration for failure to comply with Part 297.

(ii) Cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) Grant or deny requests by foreign air freight forwarders or foreign cooperative shippers associations for permission to deviate from the documentation requirements of § 297.32 of this chapter (Economic Regulations). Such requests will be granted upon a showing that the record retention system of the forwarder permits ready access to information otherwise required on a manifest; that the name of the person determining rates and charges, together with the commodity rate applied, appears on the airwaybill; that the forwarder will provide copies of airwaybills to the consignee or consignee when either so requests; and that the recordkeeping operations of the forwarder otherwise comport with the policy set forth in Civil Aeronautics Board Order E-1974 of December 7, 1982.

(4) Exempt the registrant from the requirement contained in § 297.22 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(rr)(i) Approve (with or without condition) or reject applications for registration filed under Part 294 of this chapter, or require that an applicant under Part 294 submit additional information.

(2) Cancel, revoke, or suspend the registration of any Canadian charter air taxi operator using small aircraft registered under Part 294 of this chapter that:

(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 402 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are (A) citizens of Canada, (B) the Government of Canada, or (C) a combination of both; or

(vi) No longer holds current effective operational specifications issued by the FAA.

(3) Grant or deny requests for a waiver of Part 294 of this chapter, where grant or denial of the request is in accordance with current precedent or policy.

(ss) With respect to applications filed under sections 401 and 402 of the Act for authority to engage in foreign air transportation:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed and where the applicant has already been found by the Board to be fit, willing and able to provide service of the same basic scope and character.

(2) Issue an order stating the Board's intention to process the application through show cause or other expedited procedures, where the course of action is clear under precedent or policy.

(tt) Issue an order, subject to Presidential review under section 801(a) of the Act, finalizing an order to show cause issued under paragraph (x)(1) of
this section where no objections to the order to show cause have been filed.

(11) With respect to an application filed under section 401 or 402 of the Act for authority to provide foreign air transportation and with respect to which an order instituting an oral evidentiary hearing has not been issued:

(1) Dismiss the application when dismissal is requested or consented to by the applicant.

(2) Dismiss the application when it has become moot.

(ww) Grant or deny applications of foreign air carriers for renewal of exemptions granted pursuant to section 416(b)(7) of the Act.

(vv) With respect to the procedures for the registration of foreign charter operators under Subpart F of Part 380 of this chapter:

(1) Approve the registration application under § 380.64(a)(1);

(2) Reject the registration application under § 380.64(a)(4);

(3) Request additional information from the applicant under § 380.64(a)(2);

(4) Notify the applicant under § 380.64(a)(5) that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Policy and International Affairs for formal action;

(5) Cancel the registration of a foreign charter operator under § 380.66(a) if it files a written notice with the Department that it is discontinuing its charter operations;

(6) Waive provisions of Subpart F of Part 380 of this chapter under § 380.69.

(vww) With respect to the procedures for awarding Japan charter authorizations under Part 320 of this chapter:

(1) Establish procedures for, and hold, lotteries;

(2) Award the charter authorizations;

(3) Assess penalties as described in Part 320;

(4) Extend the period for filing the required reports.

(xx) Grant or deny, or ask for additional information about, applications by or on behalf of foreign air carriers, when filed under § 389.24 of this chapter, for waiver of the Department's filing fee requirements, in accordance with policy and precedent.

(yy) Issue Fitness Certificates and Certificates of Public Convenience and Necessity when revisions thereof are necessitated by a change in the name of the carrier or of points specified in the permit.

Provided, That no issue of substance concerning the operating authority of a carrier is involved.

(zz) Issue foreign air carrier permits when revisions thereof are necessitated by a change in the name of the carrier or of points specified in the permit.

Provided, That no issue of substance concerning the operating authority of a carrier is involved.

(1) Amend orders issuing certificates to advance the effective dates of the certificate if the review is satisfactory, or

(2) Stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory.

(bb) Approve or disapprove applications filed under section 403(b) of the Act and § 223.8 of this chapter for permission to furnish free or reduced rate air transportation in foreign air transportation.

(ccc) With respect to International Air Transport Association (IATA) agreements filed with the Department pursuant to section 412 of the Act or pursuant to Civil Aeronautics Board Order E-9305 of June 15, 1955:

(1) Decline jurisdiction with respect to IATA agreements which do not affect air transportation within the policy set forth in Civil Aeronautics Board Order E-12304, dated March 31, 1958;

(2) Approve agreements which do not directly apply in air transportation;

(3) Issue orders approving, disapproving, or approving subject to conditions, IATA agreements relating to fare and rate matters, with respect to the following:

(i) Agreements naming additional specific commodity rates (rates below general cargo rates) under new, existing, or amended descriptions; amending descriptions; and/or extending or canceling existing specific commodity rates.

(ii) Agreements reached by unopposed notice pursuant to previously approved resolutions.

(iii) Agreements establishing or amending proportional or constructed fares or rates.

(iv) Agreements naming specified fares or rates to be integrated into previously approved fare or rate structures.

(v) Agreements amending or extending application of construction rules.

(vi) Agreements amending application of special (reduced) fare resolution provisions.

(vii) Agreements providing for delays in implementation.

(viii) Agreements establishing, amending, or terminating charges for nontransportation services and other ancillary fare or rate agreements involving administrative, procedural, or technical provisions, not affecting fare or rate levels.

(ix) Agreements establishing, amending, or terminating a surcharge or discount on foreign-originating air transportation to reflect a currency fluctuation.

(4) Issue orders describing filed agreements, establishing procedural dates for submission of justification, comments and replies, which support or oppose agreements, and prescribing the particular types of data to be included in such submission.

(ddd) Approve or disapprove air carrier applications involving foreign air transportation filed under section 416(b) of the Act for exemption from section 403 of the Act, air carrier tariffs, and applicable Department regulations, in cases where the disposition of the application is governed by established policy and precedent. Such approval or disapproval may be taken by order, by letter, or by stamp or notation on a copy of the application.

(eee) Approve or disapprove applications requesting relief from requirements of Department orders that carriers file data relating to experience under new foreign rates and fares.

(fff) Approve or prove applications for permission to furnish free or reduced-rate foreign air transportation to commissioned and enlisted military personnel when on official business of an air carrier to which they have been assigned for educational training purposes.

(ggg) Cancel the suspension of and/or dismiss an investigation of a tariff relating to service predominantly in foreign air transportation:

(1) When subsequent adjustments to the Standard Foreign Fare Level made pursuant to section 1002(12) of the Act, or subsequent increases in the applicable range of fare flexibility have rendered the suspension and/or investigation moot; or

(2) Where the course of action is clear under current policy and precedent.

§ 385.14 Authority of the Director, Office of Essential Air Service.

The Director, Office of Essential Air Service, has authority to:

(a) Establish procedural dates in essential air service proceedings.

(b) Issue orders under § 324.23 and § 324.6 of this chapter setting interim rates of compensation for carriers required to provide essential air transportation to eligible points, subject to adjustment by the Assistant Secretary for Policy and International Affairs upon review.
(c) Issue orders approving a carrier's alternate service pattern if:
   (1) The resulting level of service at the eligible point would be equal to or greater than the level of service earlier determined to be essential for that point; and
   (2) The community concerned does not object to the carrier's implementation of the alternate service pattern; and

(3) The carrier is not receiving a subsidy for service to the eligible point concerned or implementation of the alternate service pattern would not affect the carrier's subsidy.

(d) Issue orders adjusting the operational and/or financial unit rates of the payout formula for a carrier receiving subsidy under section 419 of the Act where the adjustment will not change the total amount of compensation that the carrier will receive.

(e) Extend the term of a carrier's subsidy rate established under section 419 of the Act, with the amount paid during the extension subject to adjustment by the Assistant Secretary for Policy and International Affairs upon review.

(f) Renew, up to five times in succession, an order under section 419(a)(6) of the Act to an air carrier to continue providing essential air transportation while the Department attempts to find a replacement carrier.

(g) Request service and subsidy proposals from carriers interested in providing essential air transportation to an eligible point which is not receiving essential air service for which no appeal of its essential air service determination is pending.

(h) Request service and subsidy proposals from carriers interested in providing essential air transportation to an eligible point when no proposals were filed in response to a previous request for proposals.

(i) Send a statement under § 324.3 of this chapter, to an air carrier, disagreeing with its application for compensation for losses under section 419, and to arrange an informal conference under § 324.4 of this chapter for the purpose of resolving these disagreements.

(j) Issue final orders establishing temporary or final subsidy rates under section 406 or 419 or final adjustments of compensation for losses under section 419 in those cases where no objection has been filed to a show cause order, and where the rates established are the same as those proposed in the approved show cause order.

(k) Issue final orders amending the reporting requirement for distribution of reported services and financial data to selected categories for the semi-annual review of subsidy-eligible and subsidy-ineligible operations under the local service class subsidy rate.

(l) Issue final orders making ad hoc adjustments to individual carrier subsidy ceilings under the local service class subsidy rate for the addition, reinstatement, suspension, or deletion of subsidy-eligible communities to the carrier's route system.

(m) Dismiss applications for compensation for losses if they do not contain the information required by § 324.2(b) of this chapter, and close the case if the required information is not submitted within 90 days after the application is dismissed.

(n) Establish the amount of a carrier's fuel adjustment in accordance with a subsidy rate order adopted under section 419 of the Act that provides for such adjustments.

(o) With respect to provisions for terminations, suspensions, or reductions of service under Part 323 of this chapter:
   (1) Require any person who files a notice, objection, or answer to supply additional information;
   (2) Require service of a notice, objection, or answer upon any person;
   (3) Accept late-filed objections or answers, upon motion, for good cause shown; and
   (4) Extend the time for filing objections or answers, when the initial notice has been filed earlier than required under § 323.5.

§ 385.15 [Reserved].

§ 385.16 Authority of the Director, Office of International Aviation Relations.

The Director, Office of International Aviation Relations, has authority to:

(a) Require service of a notice, objection, or answer upon any person;

(b) Issue orders deferring action until after oral argument on motions submitted by parties subsequent to the issuance of an Administrative Law Judge's initial or recommended decision.

(c) Grant extensions of time in accordance with § 385.15.

(d) Issue orders requiring service of a notice, objection, or answer, and closing the case in accordance with § 385.15.

(e) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(f) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(g) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(h) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(i) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(j) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(k) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(l) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(m) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(n) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(o) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(p) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(q) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(r) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(s) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(t) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(u) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(v) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(w) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(x) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(y) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

(z) Issue orders requiring service of a notice, objection, or answer, and dismissing the case in accordance with § 385.15.

{Reserved}
release to the public such portions of these transcripts and detailed minutes not found by him or her to be exempt from release pursuant to the standards set out at 5 U.S.C. 552(b)(c) and 14 CFR 310.5.

(b) To the extent that a hearing case is involved, the authority assigned to the General Counsel in paragraph (a) of this section shall not be reassigned to the Deputy General Counsel or exercised by the Deputy General Counsel in the capacity of Acting General Counsel.

§ 385.20 Authority of the Assistant General Counsel for Regulation and Enforcement.

The Assistant General Counsel for Regulation and Enforcement has authority to:

(a) Call public meetings in pending rulemaking proceedings,
(b) Issue a notice suspending the effective dates of final regulations issued by the General Counsel pending Departmental determination of review proceedings instituted thereon, whether by petition or upon order of the Department. (Such a notice is not subject to the review procedures of Subpart C of this part.), and
(c) Approve or disapprove, for good cause shown, requests to extend the time for filing comments on all proposed or final new or amended regulations, and requests to extend comment periods following the issuance of final rules.

§ 385.21 [Reserved]

§ 385.22 Authority of the Deputy General Counsel.

The Deputy General Counsel has authority to:

(a) Compromise any civil penalties being imposed in enforcement cases.
(b) Issue orders initiating and terminating informal nonpublic investigations under Part 305 of this chapter (Procedural Regulations).
(c) Issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specific answers to questions upon which information is deemed necessary. Special reports shall be under oath whenever the Deputy General Counsel so requires.
(d) Institute and prosecute in the proper court, as agent of the Department, all necessary proceedings for the enforcement of the provisions of the act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof.

Any action taken by the Deputy General Counsel, pursuant to the authority of this section shall not be subject to the review procedures of this part.

(e) Make findings regarding the reasonable necessity for the application of the Department's authority to obtain access to lands, buildings and equipment, and to inspect, examine and make notes and copies of accounts, records, memorandums, documents, papers and correspondence of persons having control over, or affiliated with, any person subject to regulation under titles IV or X of the Act, through issuance of an appropriate order, letter or other transmittal.

(f) Issue orders denying or granting conditional or complete confidential treatment of information supplied by any person to the Office of Aviation Enforcement and Proceedings. Confidential treatment may only be granted upon a finding that, if the information were in the Department's possession and a Freedom of Information Act (FOIA) request were made for the information:

(1) At the time of the confidentiality request, the FOIA request would be denied on the basis of one or more of the FOIA exemptions; and
(2) If at any later time, the FOIA request would also be denied, absent a material change in circumstances (which may include a demonstration that the asserted exemption does not apply).

§ 385.23 Heads of Offices and Assistant General Counsels.

The heads of Offices and Assistant General Counsels have the authority to:

(a) Grant requests for permission to withdraw petitions, applications, motions, complaints, or other pleadings or documents which the respective Office has responsibility for processing where such authority has not otherwise been assigned in this regulation.
(b) Grant extensions of time for filing of documents or reports which are required to be filed by regulation or Department order and which reports or documents the respective Office has the responsibility for processing.
(c) Grant waivers of the environmental procedures set by Department order in any proceeding or portion of a proceeding dealing with environmental matters.
(d) Establish procedures on a case-by-case basis for environmental proceedings to ensure compliance with applicable law.

§ 385.24 [Reserved]

§ 385.25 [Reserved]

§ 385.26 [Reserved]

§ 385.27 Authority of the Director, Office of Aviation Information Management, Research and Special Programs Administration.

The Director, Office of Aviation Information Management, Research and Special Programs Administration has authority to:

(a) Propose and issue amendments to the Department's reporting requirements for carrying out titles IV and X of the Act, with the concurrence of the General Counsel and any concerned offices, when no person having a substantial interest expresses an objection to the change.
(b) Interpret the information reporting requirements used to carry out titles IV and X of the Act.
(c) Except as authority is otherwise specifically assigned, waive any of the reporting requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.
(d) Require special reports or documentation from any air carrier under circumstances where he or she finds that such reports or documentation are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, Department officials, or another agency or component of the Federal Government.
(e) Dismiss petitions for Department or RSPA action with respect to reporting matters when such dismissal is requested or consented to by the petitioner.
(f) Grant or deny requests by air carriers for extension of filing dates for reports as specified in the Economic Regulations.
(g) Propose and issue amendments to accounting regulations to conform with generally accepted accounting principles, with the concurrence of the concerned Department officials, when no person having a substantial interest expresses an objection to the change. A thirty-day period for comments will be allowed.
(h) Propose and issue amendments to incorporate accounting interpretations into the Department's regulations used to carry out titles IV and X of the Act with the concurrence of the concerned Department officials when no person having a substantial interest expresses
an objection to the change. A thirty-day period for comments will be allowed.

(i) Propose and issue amendments of an editorial or technical nature that prescribe the content of the accountant's uniform accounting system used to carry out titles IV and X of the Act with the concurrence of concerned Department officials, when no person having a substantial interest expresses an objection to the change.

(j) Interpret the accounting requirements used to carry out titles IV and X of the Act. Except as authority is otherwise specifically delegated, waive any of the accounting requirements, after coordinating with concerned Department officials upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.

(k) Dismiss petitions for Department action with respect to accounting matters when such dismissal is requested or consented to by the petitioner.

(l) Grant or deny requests by air carriers for substitution of their own forms or adaptation of Department forms to meet special needs where Department approval of such form is required by the Economic Regulations.

(m) Grant or deny requests for confidential treatment of preliminary year-end financial reports.

(n) Grant or deny requests for use of international service segment data in accordance with the limitations on the availability of these data contained in paragraph (k) of the reporting instructions for Schedule P-12(a), which are contained in section 24 of Part 241 of this chapter.

§ 385.28 Authority of the Director, Office of Administrative Operations.

The Director, Office of Administrative Operations, has authority to:

(a) Grant or deny applications under § 389.27(b) of this chapter for refunds of fees paid, consistent with Board policy, and to order amounts refunded as necessary.

(b) Send notices of claim and other communications to a debtor under Part 316, and to impose and to waive interest and other charges and to settle claims by compromise with the concurrence of those Board officials specified in § 516.9(b) of this chapter, in accordance with Board policy and precedent.

(c) Pay from appropriated funds all properly documented claims consistent with Treasury, OMB, GAO, and CAB policies.

(d) Make minor or routine adjustments to payments based on audit reports prepared by the Inspector General, and through routine internal examinations of claims and vouchers.

(e) Design air carrier subsidy claim forms.

§ 385.29 [Reserved]

§ 385.30 Authority of the Director, Office of Community and Consumer Affairs.

The Director, Office of Community and Consumer Affairs, has the authority to:

(a) With the concurrence of the General Counsel, make findings regarding the reasonable necessity for the application of the authority to inspect, examine, and make notes and copies of accounts, records, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to Department regulation, through issuance of an appropriate order, letter, or other transmittal;

(b) Approve or disapprove written statements filed by air carriers pursuant to § 230.9 of this chapter (Economic Regulations) explaining the terms, conditions, and limitations of denied boarding compensation provided by Part 250 of this chapter.

(c) Grant or deny applications for relief under paragraphs (e) and (f) of § 221.176 of this chapter.

(d) Grant or deny applications for relief under § 250.11 of this chapter.

(e) Grant or deny applications for waivers filed under § 252.4 of this chapter in order to allow a carrier to experiment with other methods of achieving the public policy objectives of Part 252 of this chapter.

(f) Recommend to the Deputy General Counsel the compromise of civil penalties in the resolution of informal consumer complaints.

Subpart C—Procedure on Review of Staff Action

§ 385.50 Persons who may petition for review.

Petitions for review may be filed by the applicant; by persons who have availed themselves of the opportunity, if any, to participate in the matter at the staff action level; and by persons who have not had opportunity to so participate or show good and sufficient cause for not having participated: Provided, That such persons, other than the applicant, disclose a substantial interest which would be adversely affected by the respective staff action.

§ 385.51 Petitions for review.

(a) Time for filing. Petitions for review shall be filed and served within ten (10) days after the date of the staff action to which they relate, but a different period may be fixed in such staff action consistent with effective preservation of the right to petition for discretionary review and the exigencies of the situation.

(b) Contents. Petitions for review shall demonstrate that (1) a finding of material fact is clearly erroneous; (2) a legal conclusion is contrary to law; Department rules, or precedent; (3) a substantial and important question of policy is involved; (4) a prejudicial procedural error has occurred; or (5) the staff action is substantially deficient on its face. The petition shall briefly and specifically state the alleged grounds for review and the relief sought. If persons who participated at the staff action level set forth any new facts, arguments, or other new matter, an explanation must be furnished as to why such matter was not previously adduced at the staff action level. In the absence of a valid explanation, the Department may disregard such new matter.

(c) Form and filing. Petitions shall comply with the form and filing requirements of §§ 302.3 (a), (b), and (c), and 302.4 of this chapter. (Rules of practice in Economic Proceedings).
Petitions shall not exceed 10 pages in length. A greater length, however, may be specified in the staff action taken. The petitions shall be accompanied by proof of required service. However, persons who seek review of a civil penalty proposed by the Assistant General Counsel for Aviation Enforcement and Proceedings pursuant to § 385.22(a) may submit their request therefor by letter to the Department with a copy to the Assistant General Counsel for Aviation Enforcement and Proceedings and need not comply with the above form and filing requirements.

(d) Service. A petition filed by a person other than the applicant shall be served on the applicant. Petitions shall also be served on any persons who have served documents on the petitioner at the staff action level, and on such other persons as may be directed by the Department or the staff member who took the action to be reviewed.

(e) Answers. The applicant and such other persons as disclose a substantial interest which would be adversely affected by the relief sought in the petition may, within ten (10) days after filing the petition, file an answer thereto. A different period for the filing of answers may be fixed in the staff action. Such answers shall comply with the form and filing requirements applicable to petitions and shall be served on the applicant and any other person who has theretofore served a document in the matter on such respondent.

§ 385.52 Effective date of staff action.

Unless, within the time provided by or pursuant to this regulation, a petition for review is filed, the petition, file an answer thereto. A different period for the filing of answers may be fixed in the staff action. Such answers shall comply with the form and filing requirements applicable to petitions and shall be served on the applicant and any other person who has theretofore served a document in the matter on such respondent.

§ 385.54 Decision by the Reviewing Official.

(a) Decline of right to review. If the Reviewing Official declines the right to exercise discretionary review, the staff action stayed by the petition for review shall become effective on the second business day following the date of service of the order, unless the order provides otherwise.

(b) Exercise of right to review. The Reviewing Official will exercise his or her discretionary right of review either upon petition or on his or her own motion if two or more Board Members so desire. The Board may by order provide for interlocutory relief pending his or her decision on the merits and may limit the issues on review. The Reviewing Official may affirm, modify or set aside the staff action, or order the matter remanded, or may order further submittals or other proceedings before making a decision on the merits. In case the Reviewing Official affirms the staff action, staff action stayed by the petition for review shall become effective on the second business day following the date of service of the Reviewing Official's order, unless the order provides otherwise. Decisions by the Reviewing Official under this part are final and are not subject to petitions for reconsideration.

§ 385.53 Review by the staff.

Where a petition for review is duly filed, the staff member may, upon consideration of all documents properly filed, reverse his or her decision. Except in the case of Administrative Law Judges, action taken by a staff member other than an office head or Assistant General Counsel may be reversed by the respective office head or Assistant General Counsel who is in the supervisory chain of command with respect to the staff member who took the initial action. If the initial action is reversed, the petition for review will not be submitted to the Reviewing Official. Staff action reversing the initial staff action shall be subject to petition for Department review as any other staff action.

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-199]

Organization and Delegation of Powers and Duties

Transfer of Civil Aeronautics Board Functions

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to various DOT officials those functions of the Civil Aeronautics board (CAB) that will transfer to DOT upon termination of the CAB.

DATE: The effective date of this amendment is January 1, 1985.

FOR FURTHER INFORMATION CONTACT:
Sam Podberesky, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Washington, DC (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

Background

Certain functions relating to the economic regulation of aviation that have been carried out by the CAB are scheduled to transfer to DOT upon the sunset of the CAB on January 1, 1985, pursuant to the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984. Rather than establish a separate organization to carry out these functions, the Secretary has decided to integrate them, and the personnel and other resources of the CAB that are also transferring to DOT, into the existing DOT structure.

Provisions for Fair and Impartial Decisionmaking

DOT will act as a quasi-judicial agency in carrying out some of these functions. It will institute public proceedings, hold hearings, and decide cases based on formal hearing records. This requires that we take steps to ensure "separation of functions" and otherwise to maintain a fair and impartial decisionmaking process.

When a matter in contention is to be decided on the record of a formal evidentiary hearing (hearing case) the decision must be based exclusively on the record made at the hearing, and officials making that decision may not be influenced by off-the-record
communications by the DOT personnel assigned as parties to the hearing. To provide this protection, the following practices will be observed:

1. All DOT officials and employees will be bound by rules establishing standards of conduct in formal proceedings, including rules governing ex parte contacts.

2. Attorneys in the Office of the General Counsel who act as prosecutors or public counsel will not be the same attorneys who advise the decisionmakers, nor will these two types of attorneys confer on a hearing matter outside the hearing record. Attorneys who act as prosecutors or public counsel will comprise a separate unit in the Office of the General Counsel and will report to the Deputy General Counsel, and not to the General Counsel.

3. At the conclusion of the hearing in a carrier selection proceeding for international route authority (and any other proceeding that the Secretary designates), the presiding administrative law judge (ALJ) will make a recommended decision to the Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs (currently, a Deputy Assistant Secretary), who will make the decision. In making that decision, the Designated Senior Career Official will not be advised by DOT officials or employees who assisted the attorneys serving as prosecutors or public counsel in the case. In other hearing cases, the Assistant Secretary for Policy and International Affairs will make the decision of the Department on the basis of the ALJ’s recommendation. (In nonhearing cases, the decision will ordinarily be made by the officials who are delegated responsibilities under this rule.) The Secretary may make the decision, in lieu of the Assistant Secretary, in cases involving significant national transportation policy issues.

4. Discretionary review of decisions of the Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs will be by the Secretary or the Assistant Secretary for Policy and International Affairs; they will be limited to either approving the decision or remanding it for further consideration with a statement of reasons for such remand.

Delegations

The specific functions and the offices that will carry them out appear below. Detailed staff delegations implementing these authorities as carried out by the CAB appear in 14 CFR Part 353; DOT intends to adopt those delegations in large measure, modified to the extent required by DOT’s structure. Interim final regulations to do that appear elsewhere in today’s Federal Register with a request for public comment. Those staff delegations supplement the primary delegations that are made here.

Also, to clarify past DOT practice, which has been supported by recent court decisions, a statement of the authority of the Secretary to carry out any powers that she has delegated, except where limited by statute or regulation, is added.

Office of the Assistant Secretary for Policy and International Affairs.

International aviation functions, which include, among others, bilateral negotiations; authorizing United States carriers to provide foreign transportation; authorizations for foreign air carriers; review and approval of charter applications in foreign air transportation; international fares, rates, and tariff review; decisions on unfair or discriminatory competitive practices petitions in foreign air transportation; and regulation of international air mail rates.

Interstate and overseas air transportation functions, which include determining the economic fitness of air carriers; administering various registration and insurance requirements; regulation of rates for the carriage of air mail between points in Alaska; and review of matters relating to essential air service.

Employee protection under section 45(a) of the Airline Deregulation Act of 1978 (invoking primarily determinations of whether deregulation is the major cause of the termination of airline employees, thereby making them eligible for certain Federal financial benefits). Antitrust matters, including unfair competitive practices and approval of, and antitrust immunity for, mergers, interlocking relationships, and intercarrier agreements.

Office of the General Counsel. All legal functions of the CAB are being transferred to the General Counsel of DOT, who is responsible for the legal sufficiency of all final actions taken under transferred functions. Accordingly, actions and decisions of the Assistant Secretary for Policy and International Affairs and of the Assistant Secretary for Governmental Affairs under functions transferred to DOT from the CAB will be coordinated with the Office of the General Counsel, as appropriate. This requires no special delegation to the General Counsel, since it is part of the General Counsel’s basic responsibilities.

A separate unit in the Office of the General Counsel, subject to the supervision of the Deputy General Counsel, will litigate hearing cases as public counsel and initiate enforcement proceedings, and will assess and compromise penalties for violations of those sections of the Federal Aviation Act and related statutes, and of regulations under this Act, for which responsibility is being transferred to DOT.

The docket functions currently carried out by the Office of the Secretary at the CAB will be carried out by a new Documentary Services Division in the General Counsel’s Office of Regulation and Enforcement.

Office of the Assistant Secretary for Administration. Processing of EAS subsidy payments. Also, for administrative support purposes, the CAB’s Administrative Law Judges will be assigned to a new Office of Hearings in the Office of the Assistant Secretary for Administration.

Office of the Assistant Secretary for Governmental Affairs. Consumer protection and community assistance functions, which include, advising consumers with complaints involving air carriers; recommending enforcement actions to the Office of the General Counsel; promulgating consumer protection regulations and issuing waivers and exemptions from these regulations; keeping communities apprised of their rights to air service under the EAS program; and ensuring that State and local views are considered in decisions involving the EAS program.

Office of the Inspector General. Audits of EAS subsidies and audits in support of other transferred functions. (Pursuant to the Inspector General Act, DOT’s Inspector General has agreed to take on these additional duties.)

Research and Special Programs Administration. Maintenance of systems for gathering and analyzing economic and operational data on international and domestic air transportation, and dissemination of the data to appropriate government and private users; transferred CAB functions under the Federal Election Campaign Act.

Office of Essential Air Service. This office will be an independent office within the Office of the Secretary. Its functions, subject to review and modification by the Assistant Secretary
for Policy and International Affairs, will be to conduct rate negotiations with carriers, set subsidy and service levels, establish community EAS standards, process carrier selection cases, evaluate and monitor air carrier performance, and perform other EAS functions currently carried out by the CAB. EAS community hearings, conducted by senior staff representatives from the Office of EAS, the Office of the General Counsel, and the Office of the Assistant Secretary for Governmental Affairs, will be instituted when necessary to consider appeals of EAS level determinations.

Production of Information

Section 407 of the Federal Aviation Act of 1958, as amended (49 USC 1377), is transferred to DOT by the Sunset Act. There are three subsections in Section 407, subsections (a), (d), and (e) (subsections (b) and (c) having been repealed by the Airline Deregulation Act of 1978). Subsection (a) will authorize DOT to require the production of information; subsection (d), to prescribe the forms in which information is to be kept; and (e), as amended by the Sunset Act, to enter carrier property to determine fitness, and to have access to records. Each of these subsections relates differently to the functions that various DOT officials will be carrying out under these delegations. The specific delegations under Section 407 are:

Research and Special Programs Administrator: (a) and (d); Assistant Secretary for Policy and International Affairs: (a), (d), and (e); Deputy General Counsel: (a) and (e); Inspector General: (e); and Assistant Secretary for Governmental Affairs: (a), (d), and (e).

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies);
Organization and functions (government agencies).

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. In § 1.43, paragraph (a) is revised, and a new paragraph (c) is added, to read as follows:

§ 1.43 General limitations and reservations.

(a) All powers and duties that are not delegated by the Secretary in this subpart, or otherwise vested in officials other than the Secretary, are reserved to the Secretary. Except as otherwise provided, the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

(c) Notwithstanding the provisions of paragraph (a), the delegation of authority in § 1.56a of this title to the Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs to make decisions in certain aviation hearing cases is exclusive, and may not be exercised by any other Departmental official, including the Secretary. The Secretary reserves (and delegates to the Assistant Secretary for Policy and International Affairs) only the authority to make discretionary review of any such decision and to approve it or to remand it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

2. In § 1.53, a new paragraph (g) is added at the end thereof, and the introductory text of the section is reprinted for the benefit of the reader, to read as follows:

§ 1.53 Delegations to Research and Special Programs Administrator.

The Administrator of the Research and Special Programs Administration is delegated authority to exercise powers and perform duties, including duties under the specified statutes as follows:

(g) Avionics information. (1) 49 USC 320(b)(1), relating to collection and dissemination of information on civil aeronautics; (2) Section 4(a)(7) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98-443), relating to the extension of unsecured credit to political candidates; and (3) Sections 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 407 (a) and (d) (relating to requiring the keeping of information and the forms in which it is to be kept), and 416 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1324, 1374, 1377 (a) and (d), and 1386) as appropriate to carrying out the responsibilities under this paragraph.

3. In § 1.56, a new paragraph (i) is added at the end thereof, and the introductory text of the section is reprinted for the benefit of the reader, to read as follows:

§ 1.56Delegations to Assistant Secretary for Policy and International Affairs.

The Assistant Secretary for Policy and International Affairs is delegated authority to—

(i) As supplemented by 14 CFR Part 385, as limited below, and except as provided in §§ 1.56(g), 1.57a, and 1.61(d) of this title, carry out the functions transferred to the Department from the Civil Aeronautics Board under the following statutes:

(1) 49 U.S.C. 1551(b) (except that, insofar as it relates to 49 U.S.C. 1389, the Essential Air Service Program, the delegation is limited to adoption, rejection, or modification of recommendations from and decisions of the Director of the Office of Essential Air Services) and 49 U.S.C. 1552;

(2) Section 4(a)(1) through (a)(6) and (a) through (10) of the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443; October 4, 1984).

Insofar as this delegation authorizes review of decisions of the Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs under § 1.56a of this title, the authority is limited to approving any such decision or remanding it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

4. A new § 1.56a is added, to read as follows:

§ 1.56aDelegations to the Designated Senior Career Official, Office of the Assistant Secretary for Policy and International Affairs.

The Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs is delegated exclusive authority to make decisions in all hearing cases to select a carrier for limited-designation, international route authority, and in any other case that the Secretary designates, under the authority transferred to the Department from the Civil Aeronautics Board described in §§ 1.56(i) and 1.61(d) of this title; this includes the authority to adopt, reject, or modify recommended decisions of administrative law judges.

5. A new section 1.57a is added, to read as follows:

§ 1.57aDelegations to the Deputy General Counsel.

The Deputy General Counsel is delegated authority to appear on behalf of the Department on the record in hearing cases, and to initiate and carry out enforcement actions on behalf of the Department, under the authority
transferred to the Department from the Civil Aeronautics Board described in §1.56(j) and 1.61(d) of this title. This includes the authority to compromise penalties under 49 U.S.C. 1471(a)(1); and to require the production of information and enter carrier property and inspect records under 49 U.S.C. 1377 (a) and (e), and inquire into the management of the business of a carrier under 49 U.S.C. 1385, as appropriate to these responsibilities. In carrying out these functions, the Deputy General Counsel is not subject to the supervision of the General Counsel.

6. In §1.59, a new paragraph (n) is added at the end thereof, and the introductory text of the section is reprinted for the benefit of the reader, to read as follows:

§ 1.59 Delegations to Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following—

* * * * *

(n) Hearings. Provide logistical and administrative support to the Department's Office of Hearings.

7. A new §1.60 is added, to read as follows:

§ 1.60 Delegations to the Inspector General.

The Inspector General is delegated, and has agreed to carry out, the following:

(a) Aviation economics. The conduct of audits under 49 U.S.C. 1389; and 49 U.S.C. 1377(e).

(b) [Reserved].

8. In §1.61, a new paragraph (d) is added at the end thereof, and the introductory text of the section is reprinted for the benefit of the reader, to read as follows:

§ 1.61 Delegations to Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs is delegated authority to:

* * * * *

(d) As supplemented by 14 CFR Part 385, carry out the following authority transferred to the Department from the Civil Aeronautics Board—

(1) Assist consumers in dealings with the air transportation industry;

(2) Assist State and local organizations in handling airline consumer complaints;

(3) Investigate consumer complaints regarding the air transportation industry and, as appropriate, recommend enforcement actions to be brought by the Deputy General Counsel;

(4) Issue consumer assistance and protection regulations, and waivers and exemptions therefrom; and

(5) Carry out the following statutory provisions:

(i) Section 4(a)(6) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98-443), relating to enforcement of the Consumer Credit Protection Act;

(ii) Sections 101(3) (relating to relieving certain carriers from provisions of the Federal Aviation Act), 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 404 (relating to enforcing the duty of carriers to provide safe and adequate service), 407(a) and (e) (relating to requiring the production of information, entering carrier property, and inspecting records), 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), and 418 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301(3), 1324, 1374, 1377(a) and (e), 1381, and 1388) as appropriate to the consumer information and assistance functions in this paragraph.

9. A new §1.63 is added, to read as follows:

§ 1.63 Delegations to Director, Office of Essential Air Service.

The Director, Office of Essential Air Service, is delegated authority to:

(a) Subject to §§1.55(b), 1.58a, 1.60(a), and 1.61(d) of this title, carry out the functions described in 49 USC 1389 and transferred to the Department by 49 U.S.C. 1551(b), relating to the Essential Air Service Program.

10. The table of contents for Part 1 is amended by adding: (1) after "1.55 Delegations to Assistant Secretary for Policy and International Affairs" the following:

1.55a Delegations to Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs.

(2) after "1.57 Delegations to General Counsel" the following:

1.57a Delegations to Deputy General Counsel.

(3) after "1.59 Delegations to Assistant Secretary for Administration" the following:

1.59a Delegations to Inspector General.

(4) after "1.63 Delegations to Director of Commercial Space Transportation" the following:

1.63a Delegations to Director, Office of Commercial Space Transportation.

(49 U.S.C. 322)

Issued in Washington, DC, on December 21, 1984.

Elizabeth H. Dole,
Secretary of Transportation.

[FR Doc. 84-33743 Filed 12-28-84; 8:45 am]
BILLING CODE 4310-62-M
### Reader Aids

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### CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since the last week and which is now available for sale at the Government Printing Office.

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* No preprints in this volume were published during the period Apr. 1, 1930 to March 31, 1984. The CFR volume issued as of Apr. 1, 1923, should be retained. 
* Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).