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Monday
July 8, 1985

Selected Subjects

Animal Drugs
Food and Drug Administration

Bridges
Coast Guard

Customs Duties and Inspection
Customs Service

Grant Programs—Education
Veterans Administration

Loan Programs—Veterans
Veterans Administration

Marine Mammals
National Oceanic and Atmospheric Administration

Marketing Agreements
Agricultural Marketing Service

Penalties
Customs Service

Postal Service
Postal Service

Reporting and Recordkeeping Requirements
Treasury Department

Security Measures
Federal Aviation Administration

Underground Mining
Surface Mining Reclamation and Enforcement Office

Wine
Alcohol, Tobacco and Firearms Bureau

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Contents

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

Agricultural Marketing Service
RULES
27814 Hops of domestic production
27813 Lemons grown in California and Arizona
27813 Nectarines, peaches, and plums grown in California

Agriculture Department
See also Agricultural Marketing Service; Forest Service.
NOTICES
Program payments; income tax exclusion; primary purpose determination:
27835 Wellton-Mohawk Irrigation and Drainage District irrigation improvement program, AZ
27836 Rangeland grasshopper and Mormon cricket; emergency declaration

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
27819 Wine bottlers; registry numbers

Army Department
NOTICES
Meeting:
27841 Army Science Board

Arts and Humanities, National Foundation
NOTICES
Meetings:
27865 Challenge/Advancement Ad Hoc Review Committee
27865 Humanities Panel

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
27850 Acquired Immunodeficiency Syndrome (AIDS); surveillance and associated epidemiologic investigations; correction

Civil Rights Commission
NOTICES
Meeting; State advisory committees:
27836 New Jersey

Coast Guard
PROPOSED RULES
Drawbridge operations:
27832 Louisiana

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

Customs Service
RULES
Merchandise entry:
27816 Entry numbers
PROPOSED RULES
Recordkeeping, inspection, search and seizure:
27829 Violations of 19 U.S.C. 1592, prior disclosures
Tariff classifications:
27831 Backpacking tents, imported; advance notice
NOTICES
27886 Imported goods value; interest charges

Defense Department
See also Army Department.
NOTICES
27840 Travel per diem rates, civilian-personnel; changes

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
27855 Turet, Lee A., D.D.S.

Education Department
NOTICES
27841 Agency information collection activities under OMB review

Employment and Training Administration
RULES
Job Training Partnership Act and targeted jobs tax credit programs:
27818 Lower living standard income level determination; correction

Energy Department
See also Federal Energy Regulatory Commission.
NOTICES
Atomic energy agreements; subsequent agreements:
27842 European Atomic Energy Community (2 documents)
27842 European Atomic Energy Community et al.
Trespassing on Department property:
27843 Oak Ridge operating sites, TN

Environmental Protection Agency
RULES
Air quality implementation plans; preparation, adoption and submittal:
27892 Stack height requirements
NOTICES
Meetings:
27848 State-FIFRA Issues Research and Evaluation Group Task Force
Toxic and hazardous substances control:
27844 Confidential information and data transfer to contractors
27847 Premanufacture exemption applications
27845, 27848 Premanufacture notices receipts (2 documents)

Equal Employment Opportunity Commission
NOTICES
27888 Meetings; Sunshine Act

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
27924 Federal air marshalls, transportation; final rule and request for comments

Federal Communications Commission
NOTICES
27888 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
27816 Pipelines; blanket certificates for routine transactions and sales, etc.; effective date, etc.

Federal Maritime Commission
NOTICES
27889 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
27848 Citizens Financial Group, Inc., et al.
27849 Jefferson Holding Corp. et al.
27849 Verbanc Financial Corp. et al.

Federal Trade Commission
NOTICES
27889 Meetings; Sunshine Act (2 documents)

Fine Arts Commission
NOTICES
27840 Meetings

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
27818 Ivermectin paste
NOTICES
Food for human consumption:
27850 National Shellfish Sanitation Program Manual of Operations; shellfish growing areas sanitation; draft availability

Forest Service
NOTICES
Meetings:
27836 South Kaibab Grazing Advisory Board

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service.

Health Resources and Services Administration
NOTICES
Grants availability, etc.:
27851 Community health centers

Historic Preservation, Advisory Council
NOTICES
Programmatic memorandums of agreement:
27835 National Park Service; planning and leasing activities

Immigration and Naturalization Service
RULES
27816 Residence, physical presence, and absence; listing of American institutions of research; correction

Interior Department
See Land Management Bureau; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
NOTICES
27887 Tax counseling program for the elderly; application packages; availability

International Trade Administration
NOTICES
Antidumping:
27836 Heavy salted codfish from Canada
Countervailing duties:
27837 Steel products from South Africa
Meetings:
27839 Importers and Retailers' Textile Advisory Committee
Trade adjustment assistance determination petitions:
27838 General Pneumatic Products Corp. et al.

Interstate Commerce Commission
PROPOSED RULES
Procedure and administration:
27834 Intramodal rail competition; oral argument
NOTICES
Rail carriers;
27854 Product and geographic competition; guidelines; oral argument
27853 U.S. Steel Corp.; tariff charges exemption and refund petition
Railroad operation, acquisition, construction, etc.:
27855 Colorado & Eastern Railroad Co.
27855 Missouri Pacific Railroad Co.
27854 Missouri-Kansas-Texas Railroad Co.
Railroad services abandonment:
27854 Burlington Northern Railroad Co.

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service.

Labor Department
See Employment and Training Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
RULES
Public land orders:
27827 Alaska
NOTICES
Sale of public lands:
27853 California (2 documents)

National Aeronautics and Space Administration
NOTICES
Meetings:
27864 National Commission on Space

National Institutes of Health
NOTICES
Meetings:
27852 National Digestive Diseases Advisory Board
27852 National Heart, Lung, and Blood Advisory Council

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
27914 North Pacific fur seals; subsistence taking; interim

NOTICES
Permits:
27839, 27840 Marine mammals (3 documents)

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
27866 Consumers Power Co.
27868 Iowa Electric Light & Power Co. et al.
Environmental statements; availability, etc.:
27865 Consumers Power Co.
Nuclear wste transportation:
27866 Spent nuclear fuel regulation; seminar

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
27856 Incline Glass, Inc., et al.
27863 Ted McWilliams, Inc. Profit Sharing Plan, et al.

Postal Service
RULES
International Mail Manual; Express Mail Service:
27827 Panama

Public Health Service
NOTICES
National toxicology program:
27852 8-Hydroxyquinoline; toxicology and carcinogenesis studies

Securities and Exchange Commission
PROPOSED RULES
Securities:
27829 Internationalization of world securities market; extension of time
NOTICES
27868, 27871 Agency information collection activities under OMB review (2 documents)
Applications, etc.:
27870 Central & South West Corp.
27869 Central & South West Corp. et al.
27868 Great-West Life & Annuity Insurance Co. et al.
27870 Jersey Central Power & Light Co.
27889 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
27871-27873 American Stock Exchange, Inc. (4 documents)
27875 National Association of Securities Dealers, Inc.
27875, 27880 New York Stock Exchange, Inc. (2 documents)
27881 Options Clearing Corp.
27882 Pacific Stock Exchange, Inc.
27882 Philadelphia Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
27871 Philadelphia Stock Exchange, Inc.

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
27910 Subsidence control; surface structure and facilities protection

Transportation Department
See also Coast Guard; Federal Aviation Administration.
NOTICES
27884 Agency information collection activities under OMB review
Aviation proceedings:
27883 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service.
RULES
Currency and foreign transactions; financial reporting and recordkeeping:
27821 Foreign financial agencies
NOTICES
Committees; establishment, renewals, terminations, etc.:
27885 Debt Management Advisory Committee
Meetings:
27885 Debt Management Advisory Committee

Uniformed Services University of the Health Sciences
NOTICES
27889 Meetings; Sunshine Act

Veterans Administration
RULES
Vocational rehabilitation and education:
27825 Educational assistance; eligibility
PROPOSED RULES
Loan guaranty:
27833 Defaults on loans; reporting time extension

Separate Parts in This Issue

Part II
27892 Environmental Protection Agency

Part III
27910 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part IV
27914 Department of Commerce, National Oceanic and Atmospheric Administration

Part V
27924 Department of Transportation, Federal Aviation Administration

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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.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
910 27813
916 27813
917 27813
991 27814

8 CFR
316a 27816

14 CFR
108 27924

17 CFR
Proposed Rules:
240 27829

18 CFR
157 27816
389 27816

19 CFR
142 27816
Proposed Rules:
162 27829
177 27831

20 CFR
626 27818
627 27818
628 27818
629 27818
630 27818

21 CFR
520 27818

27 CFR
4 27819

30 CFR
Proposed Rules:
817 27910

31 CFR
103 27821

33 CFR
Proposed Rules:
117 27832

38 CFR
21 27825
Proposed Rules:
36 27833

39 CFR
10 27827

40 CFR
51 27892

43 CFR
Public Land Orders:
5150 Revoked in part by PLO 6607 27827
5179 Revoked in part by PLO 6607 27827
5180 Revoked in part by PLO 6607 27827
5186 Revoked in part by PLO 6607 27827
6607 27827

49 CFR
Proposed Rules:
1132 27834

50 CFR
215 27914

Rules and Regulations

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 523]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period July 7–13, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period July 7–13, 1985.

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

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

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on July 2, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand continues to be good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. New § 910.823 is added to read as follows:

§ 910.823 Lemon Regulation 523.

The quantity of lemons grown in California and Arizona which may be handled during the period July 7, 1985, through July 13, 1985, is established at 325,000 cartons.

Dated: July 3, 1985.

Thomas R. Clark,

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

[FR Doc. 85–16313 Filed 7–5–85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 7 Peach Reg. 14, Amdt. 7, and Plum Reg. 19, Amdt. 7]

Nectarines, Pears, Plums and Peaches Grown in California; Amendment of Size and Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends size and grade requirements for shipments of fresh nectarines, peaches, and plums grown in California. These requirements are necessary to promote the marketing of suitable quality and sizes of such fresh fruit in the interest of producers and consumers.

EFFECTIVE DATE: July 8, 1985.

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

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

This final rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums, and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipments of these California fruits are regulated by grade and size under Nectarine Regulation 14 (7 CFR Part 916), Peach Regulation 14 (7 CFR Part 917), and Plum Regulation 19 (7 CFR Part 917), all

initially issued in July 1981. Because these regulations do not change substantially from season to season, they were issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary. This final rule is based upon recommendations and information submitted by the committees and other available information.

This final rule amends the size requirements for nectarines and peaches by deleting from size regulation on Bonjour variety of peaches and the Honey Gold variety of nectarines which are no longer produced commercially. It also amends grade requirements for the Kelsey and Tragedy varieties of plums by permitting shipment of such plums which fail to meet U.S. No. 1 grade on account of healed, stem-end cracks. This action recognizes the tendency of these varieties of plums to develop stem-end cracks as the trees mature. This condition does not adversely affect the quality of the fruit.

It is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on fresh shipments of California nectarines, peaches, and plums and shipments of such commodities are currently underway. Handlers have been apprised of such provisions and require no additional time to comply therewith.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

1. The authority citations for 7 CFR Parts 916 and 917 continue to read as follows:

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

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Paragraph (a)(4) introductory text of § 916.356 is revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(4) Any package or container of Ambrosia, Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P–R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red or 20 G 836 variety of nectarines unless:

* * * * *

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

3. Paragraph (a)(4) introductory text of § 917.459 (50 FR 12217) is revised to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(4) Any package or container of Babcock, Coronet, Early Coronet, Early Royal May, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK–1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50–178 variety of peaches unless:

* * * * *

4. Paragraph (b) of § 917.460 (50 FR 12217) is amended to read as follows:

§ 917.460 Plum Regulation 19.

(a) * * *

(b) No handler shall ship any lot of packages or containers of Tragedy or Kelsey plums unless such plums grade U.S. No. 1 with additional tolerance of 10 percent for defects not considered serious damage, except that healed cracks emanating from the stem-end which do not cause serious damage shall not be considered as a grade defect with respect to such grade: *Provided,* That internal discoloration not considered serious damage will be permitted; and *Provided further,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service.

* * * * *

Dated: July 1, 1985.

Thomas R. Clark,

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

[FR Doc. 85–16067 Filed 7–5–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 991

Hops of Domestic Production; Marketing Policy for the Period August 1 to December 31, 1985; Establishment of Salable Quantity and Allotment Percentage; Additional Time for Transferring Allotment Bases; and Waiver of Bona Fide Effort Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of hops that may be freely marketed from the 1985 crop, provides a later date for producers to transfer allotment bases, and waives the bona fide effort requirement. These marketing policy actions are under the marketing order for domestic hops, and are intended to avoid undue disruption within the hop industry and to maintain continuity in the marketing of hops, through the end of the 1985 calendar year.

DATES: Additional time for transferring allotment bases effective July 8, 1985; salable quantity and allotment percentage and waiver of bona fide effort requirement effective August 1, 1985 through December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking on all of these amendments and that good cause exists for not postponing the effective date of the portion of this action providing a later date for producers to transfer allotment bases, until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The final date for transferring allotment bases, expired April 1, and this action allows producers who need allotment base for the 1985–86 marketing year to acquire it; (2) because of the late selection of Hop

Administrative Committee (HAC) members, all of the HAC recommendations were delayed this year; and (3) the cultural practices for 1985 crop hops have already begun and hop producers need to arrange for allotment base transfers which they normally do earlier in the season.

The establishment of a salable quantity and allotment percentage, the additional time for producers to transfer allotment base, and suspension of the bona fide effort requirement, are in accordance with the provisions of Marketing Order No. 991, as amended (7 CFR Part 991) regulating the handling of hops of domestic production. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions were recommended in part, by the Hop Administrative Committee (HAC) which works with the Department in administering the marketing order program.

Pursuant to §§ 991.36 and 991.37 of the order, the salable quantity and allotment percentage for the portion of the 1985–86 marketing year, between August 1 and December 31, 1985, are based upon the following estimates:

(1) Total domestic consumption of 43,500,000 pounds of hops;

(2) Minus imports of 15,500,000 pounds of hops, to result in domesic consumption of U.S. hops of 28,000,000 pounds;

(3) Plus total exports of 28,000,000 pounds of hops, to equal 56,000,000 pounds total usage of U.S. hops;

(4) Plus 2,500,000 pounds to adjust for weight loss of hops processed into pellets and extract;

(5) Minus inventory adjustment of 6,500,000 pounds;

(6) Plus as adjustment of 6,492,000 pounds to provide for adequate supplies should some producer allotments not be fully produced; and

(7) This rusults in a salable quantity of 58,492,000 pounds.

The allotment percentage of 97 percent is computed by subtracting from this salable quantity a total of 1,000,000 pounds for additional allotment bases for hops of the Fuggle variety granted pursuant to § 991.38(b) and § 991.138(c) and dividing the remainder by 59,269,877 pounds, the total of all other allotment bases.

This volume regulation will have little effect on the marketing of 1985 crop hops due to the burdensome stocks and inactive market currently facing the industry. It makes available a quantity of hops higher than current market needs but it endeavors to accommodate those producers who have high value future contracts.

Section 991.146(c) of Subpart—Administrative Rules and Regulations (7 CFR 991.130—991.939) currently provides that a producer can transfer all or part of his allotment base to another producer only if the transfer is effective prior to the issuance of annual allotment to the transferor or prior to April 1, whichever is earlier. The later than normal establishment of the salable quantity and allotment percentage for the portion of the marketing year between August 1 and December 31, 1985, makes it necessary to change the April 1 cutoff date to July 31, 1985, for the 1985 calendar year. This will enable producers to transfer base pursuant to § 991.46. Pursuant to § 991.38(a)(5) of the order, the right of each producer to retain all or part of this allotment base depends on his continuing to make a bona fide effort to produce his annual allotment. If a producer fails to make a bona fide effort to produce his annual allotment, his allotment base must be reduced by an amount equivalent to the unproduced proportion. Paragraph (a)(5) also authorizes the HAC, with approval of the Secretary, to waive the bona fide effort requirement.

The HAC recommended waiving the bona fide effort requirement because it concluded that its implementation would result in additional and unneeded production. Currently, the hop market is inactive and an oversupply of hops exists, and enforcement of the bona fide effort requirement for the period between August 1 and December 31 could further depresss the market.

Subsequent to HAC's marketing policy meeting, a number of views were received from hop producers in opposition to an allotment percentage of 97 percent. All of the producers recommended suspension of volume regulations for the 1985–86 marketing year, and these comments were considered in evaluating the recommendation. In view of the current supply and marketing conditions, failure to issue volume control regulations at this late date would only exacerbate the industry's problems by further depressing market conditions.

After consideration of all relevant matter presented, the information and recommendations of the HAC, the views received, and other available information, it is found that: (1) To establish a salable quantity of 58,492,000 pounds resulting in an allotment percentage of 97 percent; (2) to change the cutoff date for producers to transfer allotment bases from April 1 to July 31 for the 1985 calendar year; and (3) to waive the bona fide effort requirement for the period from August 1 and December 31, 1985, will allow the industry the time to adjust to the changed conditions that may occur with the termination of the marketing order at the end of the calendar year.

List of Subjects in 7 CFR Part 991

Marketing agreements and orders, Hops.

1. The authority citation for 7 CFR Part 991 continues to read as follows:

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

PART 991—HOPS OF DOMESTIC PRODUCTION

Subpart—Administrative Rules and Regulations

Therefore, the Subpart—Administrative Rules and Regulations (7 CFR 991.130—991.939) is amended by revising §§ 991.146(c) and § 991.939 and adding a new § 991.223 as follows: (Sections 991.223 and 991.939 will not be published in the Code of Federal Regulations).

2. Section 991.146(c) is revised to read as follows:

§ 991.146 Transfer of allotment bases.

* * * * *

(c) Whenever a producer transfers all or part of his allotment base to another producer, the annual allotment referable to such transferred allotment base, or part thereof, shall be issued to the transferee only if the transfer is effective prior to the issuance of an annual allotment to the tranferor or prior to April 1, whichever is the earlier: *Provided,* That for the 1985 calendar year that date shall be July 31 instead of April 1.

3. A new § 991.223 is added to read as follows:

§ 991.223 Allotment percentage and salable quantity for hops during the portion of the marketing year between August 1 and December 31, 1985.

The allotment percentage during the portion of the marketing year between August 1 and December 31, 1985, shall be 97 percent, and the salable quantity shall be 58,492,000 pounds.

4. Section 991.939 is revised to read as follows:

§ 991.939 Waiver of bona fide effort requirement for a portion of the 1985–86 marketing year.

The bona fide effort requirement provided for in § 991.38(a)(5) shall be waived for the portion of the 1985–86 marketing year between August 1 and December 31, 1985.

Dated: July 2, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-16166 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence

Correction

In FR Doc. 85-15376 beginning on page 26547 in the issue of Thursday, June 27, 1985, make the following correction:

§ 316a.2 [Corrected]

On page 26548, first column, "§ 3165a.2" should have read "§ 316a.2".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 389

[Docket Nos. RM81-19-000, RM81-29-000]

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

Issued: July 1, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

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

SUMMARY: On June 17, 1985, the Federal Energy Regulatory Commission issued a final rule in Docket Nos. RM81-19-000 and RM81-29-000, 50 FR 25,701 (June 21, 1985) extending its blanket transportation program. This notice states the OMB control number for §§ 157.209(e)(3) and (e)(4) promulgated by this final rule and the effective date of this rule.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8522.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rule. On June 28, 1985, OMB approved the information collection requirements of §§ 157.209(e)(3) and (e)(4) and issued Control Number 1902-0060 for that section. Therefore, the final rule in Docket Nos. RM81-19-000 and RM81-29-000 will become effective July 1, 1985.

PART 389—[AMENDED]

Accordingly, Part 389, Chapter 1, Title 18, Code of Federal Regulations is amended as set forth below:

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

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

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "§§ 157.209(e)(3) and (e)(4)" in numerical order in the Section column, and "0060" in the corresponding position in the OMB Control Number column.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-16120 Filed 7-5-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 85-112]

Customs Regulations Amendment Relating to Entry Numbers

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document informs the public of changes in the assignment and format of entry numbers used by the international trade community in submitting entry documentation for processing by the Customs Service. The changes are one of the numerous initiatives Customs has undertaken relating to the development of a comprehensive integrated Automated Commercial System. When fully implemented, the changes will ensure entry processing efficiency.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202-535-4155), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of entry type codes and entry numbers are desirable.

Accordingly, by notice published in the **Federal Register** on January 13, 1984 (49 FR 1740), Customs proposed new procedures for both entry type codes and entry numbers and invited interested parties to submit comments. Although comments were received on both procedures, Customs published a final rule as T.D. 85-5 in the **Federal Register** on January 11, 1985 (50 FR 1499), which concerned only the changes to entry type codes. Those comments relating to the entry number proposal were still being analyzed. That analysis is now complete and the final changes to the entry numbers are the subject of this document.

Current Procedure

Customs entries are indentified by a 9-digit number in the following format:

FY-NNNNNN-C

FY represents the current fiscal year, NNNNNN is a sequential number, and C is a check digit computed from the first 8 digits.

For each fiscal year, Customs issues blocks of entry numbers to brokers and importers for each district and port. Issuing and controlling these numbers has become an administrative burden to Customs and the importing community. The issuance process at the beginning of each fiscal year is particularly time consuming and costly.

Discussion of Comments

Several of the seven commenters that responded to the notice raised issues pertaining to the proposed change to entry numbers. A discussion and analysis of these comments is as follows:

Comment: Customs must allow adequate implementation time for entry filers to make the necessary changes.

Analysis: Customs has considered and appreciates the time necessary for entry filers to make the necessary changes. Accordingly, the implementation date for the new entry number procedure is being delayed until October 1, 1985. This schedule allows both the trade and Customs adequate time for preparation.

Comment: Customs should assign separate entry filer codes at each location in which a broker or importer files entry documentation. An entry filer might also choose to combine certain offices under a single code while other districts have separate numbers.

Analysis: For Customs purposes, each business entity must be identified with a 3 character national entry filer code as part of the entry number. It should not be necessary to identify the filing locations by means of the entry number since the 4 digit Customs district/port code associated with all entries accomplishes this. Since entry filers have been given the flexibility to individually structure and allocate the 7 digits following the entry filer code in any convenient manner, the entry filer's organization or office location code can be included within the 7 digits.

Comment: Customs should calculate the entry number check digits and make them available to non-automated brokers and importers.

Analysis: To gain the maximum flexibility for the new entry number procedure, entry filers will necessarily take responsibility for assigning and controlling their own numbers. Since Customs cannot predetermine the range of organization of the numbers needed by individual entities, the entry filers, their data processors and forms producers must be responsible for check digit computation. The technical specifications related to computing the check digit and printing the number on the forms are available to brokers, importers, and forms suppliers upon request.

Comment: The numeric series of codes (000–999) should be reserved for use by airlines in order to be compatible with the existing 3 digit airline codes.

The formula for computing the check digit should include only the last 7 digits in order that it be compatible with the air waybill check digit used by airlines.

Analysis: Because the entry number is the basic method for storing and accessing data in the ACS, the accuracy rate for keying data to the system will be enhanced by assigning the numeric series of entry file codes to the largest category of users. Broker companies are the source of the majority of Customs entries. Therefore, it has been decided to reserve the numeric series of entry filer codes for broker companies and importers having significant entry volumes.

The check digit must be computed using the entire entry number including the entry filer code to ensure uniqueness and keying accuracy. Customs has decided to delay use of the entry number for in-bond transactions until analysis regarding the assignment of entry filer codes and the related check digit computation for carriers is completed. Carriers will not use the new entry number for in-bond entries at this time but will be required to use the new entry number for other types of entries.

Comment: One carrier proposed that the entry number format be expanded from 11 to 14 characters by including a 3 character alpha carrier identification code for air shipments.

Analysis: The 11 character entry number provides the largest volume entry filers with enough to last at least a decade without duplication. Expansion of the entry number by 3 characters would significantly increase data entry and computer storage cost for the trade, Customs, the Census Bureau and other Government agencies.

Comment: Blank or slash (/) should be used instead of the hyphen to separate components of the entry number. The placement of the hyphen on typewriter/data entry keyboards is more awkward and slower to use than is the space bar or slash key.

Analysis: Inasmuch as many of the entries presented to Customs are prepared on automated equipment, the separator character can be generated automatically without the need for keying. The hyphen separator is considered to be more readable than either the blank or the slash.

Accordingly, after consideration of all the comments and a further review of the matter, Customs has determined to adopt the amendments relating to entry numbers as follows:

New Procedure

For the past two years, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible, and easy to manage. Customs has now completed the administrative details for implementing this concept. Accordingly, § 142.3a, Customs Regulations (19 CFR 142.3a), relating to the procedure for the assignment of entry numbers by Customs is being deleted. Beginning October 1, 1985, the new number, including hyphens, will be shown on entry documentation that currently requires the old (current) entry number. These include the Immediate Delivery Application (Customs Form 3461), the Entry Summary (Customs Form 7501) and the broker or importer prepared Informal Entry (Customs Form 5119A). Customs is also planning to implement use of the new entry number on other entry documents which currently are unnumbered or use various other numbering schemes. These include the pre-numbered Informal Entry (Customs Form 5119A) and the Transportation Entry (Customs form 7512). Use of the new entry number on these forms will not occur until after October 1, 1985, when Customs can complete development of these capabilities and add them to the ACS. New procedures such as these will also require coordination with the trade community. Specific details and technical specifications for the new entry number and its placement on Customs entry documentation will be available to entry preparers and forms printing companies in sufficient time to order the required forms and make necessary procedural changes.

The following format must be used when showing the new entry number:

XXX–NNNNNNN–C

XXX represents an entry filer code, NNNNNNN is a unique number which will be assigned by the entry filer, and C is a check digit computed from the first 10 characters.

An increasing number of Customs entries are now prepared by automated procedures. For those entries, Customs will require that the full entry number, including the filer code and the check digit, be printed in machine-readable format on the entry form. For non-automated entries, Customs will require that the entry number, including the filer code and the check digit, be pre-printed in machine-readable format on the entry form. The technical specifications related to computing the check digit and printing the number on the forms are available to brokers, importers, forms suppliers, and other interested parties by contacting Richard J. Bonner at Customs Headquarters (202–535–4155).

Entry Filer Code (XXX)

Entry Filer Code (XXX)

The entry filer code will be the only portion of the entry number that will be assigned and controlled by Customs. A unique 3 character (alphabetic, numeric, or alpha-numeric) code will be assigned to all licensed broker companies currently filing Customs entries. A code will also be assigned to importers

currently filing a significant number of entries on a regular basis. The entry preparer will use this code nationwide as the beginning 3 characters of the number for all Customs entries, regardless of where the entries are filed. The entry filer code will replace the 3 digit importer/broker numbers currently assigned by Customs districts. An entry filer code assignment will not be made for intermittent importers. However, entry forms, pre-printed with a Customs assigned entry number, will be available for sale at local Customs offices. Brokers and importers who have not been notified of their entry filer code assignment by June 30, 1985, should immediately contact Mr. Bonner.

Entry Preparer Assigned Number (NNNNNNN)

For each entry, the entry preparer will assign a unique number. This number may be assigned in any manner convenient provided the same number is not assigned to more than one transaction. This number will not be associated with a fiscal year or a Customs district/port. The numbers need not be assigned or used in sequence.

As each entry is received, Customs will record the unique number assigned to the transaction, and will not allow the use of the same number on any subsequent transaction. A duplicate number will result in Customs rejecting the transaction.

Check Digit (C)

The entry preparer will compute the check digit using a formula provided by Customs. These specific details will be made available when the entry filer codes are issued.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the changes set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection, Imports.

Amendment to the Regulations

PART 142—ENTRY PROCESS

1. The authority citation for Part 142 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Part 142 is amended by removing § 142.3a.

William von Raab,

Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16138 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, and 630

Job Training Partnership Act and Targeted Jobs Tax Credit Programs; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of Lower Living Standard Income Level; correction.

SUMMARY: This is to correct errors contained in the document which set forth revised determinations of lower living standard income levels for the Job Training Partnership Act and Targeted Jobs Tax Credit Program, published at 50 FR 24506, June 11, 1985.

There were errors contained in Table 4 on page 24508. Therefore, we are hereby publishing a corrected Table 4 as set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Telephone: 202-376-6093.

Accordingly, FR Doc. 85-14051, is amended by correcting Table 4 to read as follows:

TABLE 4.—70 PERCENT OF UPDATED 1985 LLSIL, BY FAMILY SIZE

Family size					
One	Two	Three	Four [1]	Five	Six
$6,350	$10,400	$14,280	$17,630	$20,800	$24,330
6,030	9,880	13,570	16,750	19,770	23,120
5,730	9,390	12,890	15,910	18,770	21,960
5,340	8,750	12,010	14,830	17,500	20,470
(4,890)	8,010	11,000	13,580	16,020	18,740
(4,810)	7,880	10,820	13,360	15,760	18,440
(4,720)	7,740	10,630	13,120	15,480	18,110
(4,700)	7,710	10,580	13,060	15,410	18,020
(4,670)	7,650	10,510	12,970	15,300	17,900
(4,630)	7,590	10,420	12,870	15,190	17,760
(4,630)	7,580	10,410	12,850	15,160	17,730
(4,590)	7,530	10,340	12,760	15,060	17,610
(4,550)	7,460	10,240	12,640	14,920	17,440
(4,510)	7,390	10,140	12,520	14,770	17,280
(4,470)	7,330	10,060	12,420	14,660	17,140
(4,460)	7,320	10,040	12,400	14,630	17,110
(4,430)	7,260	9,970	12,310	14,530	16,990
(4,420)	7,250	9,950	12,290	14,500	16,960
(4,380)	7,180	9,860	12,170	14,360	16,790
(4,370)	7,160	9,830	12,130	14,310	16,740
(4,360)	7,150	9,820	12,120	14,300	16,730
(4,350)	7,130	9,780	12,080	14,250	16,670
(4,330)	7,100	9,740	12,030	14,200	16,600
(4,320)	7,080	9,720	12,000	14,160	16,560
(4,290)	7,030	9,650	11,910	14,050	16,440
(4,280)	7,010	9,620	11,880	14,020	16,390
(4,180)	6,850	9,400	11,610	13,700	16,020
(4,170)	6,840	9,390	11,590	13,680	15,990
(4,150)	6,800	9,340	11,530	13,610	15,910
(4,110)	6,730	9,240	11,410	13,460	15,750
(4,100)	6,720	9,230	11,390	13,440	15,720
(3,950)	6,470	8,890	10,970	12,940	15,140

[1] Figures provided above in this notice are for a family size of four persons. To use this table, the appropriate figure should be found in the family size of four column. Then one may read across the row for family sizes other than four in the appropriate columns.

Signed at Washington, D.C., this 24th day of June 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85-16083 Filed 7-5-85; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, providing for additional uses of Eqvalan® (ivermectin) paste for treating and controlling certain parasites in horses.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has filed a supplement to NADA 134-314 for Eqvalan® (ivermectin) paste. The supplement provides for additional uses of the paste for the control and treatment of certain parasites in horses. The supplement is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 520.1192 by revising paragraph (c)(2) to read as follows:

§ 520.1192 Ivermectin paste.

* * * * *

(c) * * *

(2) *Indications for use.* It is used in horses for the treatment and control of large strongyles (adult) (*Strongylus equinus*), (adult and arterial larval stages) (*Strongylus vulgaris*), (adult and migrating tissue stages) (*Strongylus edentatus*), (adult) (*Triodontophorus* spp.); small strongyles, including those resistant to some benzimidazole class compounds (adult and fourth stage larvae) (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicodontophorus* spp., *Cylicostephanus* spp.); pinworms (adult and fourth stage larvae) (*Oxyuris equi*); ascarids (adult) (*Parascaris equorum*); hairworms (adult) (*Trichostrongylus axei*); large mouth stomach worms (adult) (*Habronema muscae*); stomach bots (oral and gastric stages) (*Gastrophilus* spp.); lungworms (adults and fourth stage larvae) (*Dictyocaulus arnfieldi*); intestinal threadworms (adults) (*Strongyloides westeri*); summer sores caused by *Habronema* and *Draschia* spp. cutaneous third stage larvae; and dermatitis caused by neck threadworm microfilariae (*Onchocerca* spp.).

* * * * *

Dated: June 28, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-16105 Filed 7-5-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-209; Ref: Notice No. 547]

Registry Number of American Bottler of Wine

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the labeling regulation in 27 CFR 4.35, by eliminating the requirement that the registry number of the American bottler be shown in direct conjunction with the name and address of the bottler. ATF believes that the bottler's registry number requirement is unnecessary, since the consumer is still sufficiently informed as to who is responsible for the bottling of the wine and where the bottling of the wine occurred.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta or Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

The proposal to require the registry number of the American bottler, as well as the basic permit number of the U.S. importer for wines bottled in a foreign country, first appeared in Notice No. 304 Amended (42 FR 30517, June 15, 1977). This proposal was made as a result of testimony at public hearings, and written comments received, in response to Notice No. 304 (41 FR 50004, November 12, 1976).

The intent of this provision was to disclose to any interested party, the true name of the American bottler. A bottler may bottle wine under a myriad of trade names, but all of the trade names would have the same registry number. To implement this provision, the Bureau intended to make available to the public, periodically updated lists of wine bottlers and their permit or registry numbers, as applicable.

Following the publication of Notice No. 304 Amended, hearings were held in San Francisco, California, and Washington, DC. Thereafter, on August 23, 1978, ATF published a final rule, Treasury Decision ATF-53 (43 FR 37672, 54624).

As stated in T.D. ATF-53, the Bureau believed it important that more precise information concerning who is responsible for bottling and where the bottling took place be used on wine labels. Therefore, as amended, § 4.35 required that there be stated on labels of American wine, the name and address of the bottler (the "address" being the actual place where the wine was bottled or packed). In addition, this section required the registry number of the American bonded winery, bonded wine cellar, taxpaid wine bottling house, or distilled spirits plant at which the wine was bottled, be shown on the label in direct conjunction with the name and address of the bottler, in type as conspicuous as the name and address (section 4.35(d)). U.S. importers were not required to state their permit number on labels of foreign bottled wine.

The above requirements, specifically relating to the actual place where the wine was bottled, and the registry

number requirement, applied to American wines bottled after December 31, 1982.

Wawszkiewicz Court Case

Certain regulations promulgated in T.D. ATF-53 were challenged in court. *Wawszkiewicz* v. *Department of the Treasury*, 480 F.Supp. 739 (D.D.C. 1979), *aff'd in part, rev'd in part* and *remanded with directions*, 670 F.2d 296 (D.C. Cir. 1981). Since the Court of Appeals' decision was handed down in late December 1981, ATF, subsequent to an industry member's petition, determined that the wine industry did not have sufficient time to redesign labels and introduce them into the market place before the January 1, 1983 mandatory compliance date.

Thereafter, a notice was published (Notice No. 433, 47 FR 51423, November 15, 1982), proposing to delay certain regulations, including the provisions of sections 4.35(a), (c) and (d), from January 1, 1983, until January 1, 1985. This extension was accomplished in Treasury Decision ATF-126, published in the **Federal Register** on January 21, 1983 (48 FR 2762).

Wine Institute Petition

In a petition dated March 30, 1984, the Wine Institute requested ATF to remove the registry number requirement (§ 4.35(d)) from the regulations. The petitioner maintained that the appearance of the registry number serves no useful purpose, and will result in costly label revisions. The petitioner also maintained that the requirement is discriminatory against American bottlers of wine since American wine importers are not required to include their permit number on the label, as was originally proposed in Notice No. 304 Amended. In addition, the Wine Institute believed that the bottler's name and address requirement sufficiently satisfies the statutory mandate, as specified in section 5(e) of the Federal Alcohol Administration Act (FAA Act), in regard to providing the customer with adequate information about the bottler.

Notice No. 547

ATF considered the comments made by the Wine Institute in their petition. ATF adopted the registry number requirement because, as mentioned, it believed the registry number would provide the consumer with more precise information regarding who is responsible for the bottling and where the bottling occurred. The petition, however, raised some concerns regarding the need for further information on the label regarding the bottler, other than the name and address already provided.

Therefore, ATF published Notice No. 547 (49 FR 42577, October 23, 1984) proposing, in part, to take regulatory action on the bottler's registry number requirement, § 4.35(d). ATF requested comment on whether that requirement should be removed from the regulations, or should the American importers of foreign bottled wines also be required to label their basic permit number, or should the registry or permit number be required only when a trade name, other than the corporate name, is used on labels of wine. The comment period for this issue closed on January 22, 1985.

ATF also proposed in Notice No. 547 to extend the compliance date of § 4.35(d) from January 1, 1985, to January 1, 1987, to allow sufficient time for the rulemaking process to be completed. The comment period for this issue closed on November 7, 1984. Subsequently, a final rule was published on January 7, 1985 (T.D. ATF-194, 50 FR 758), extending the compliance date of § 4.35(d) until January 1, 1987.

Analysis of Comments

In response to Notice No. 547, four comments were received. One commenter believed that the registry number requirement should be retained, since it would aid any interested person in identifying who is responsible for the particular wine product.

Another commenter, representing the interests of New Zealand wine producers and exporters, stated that requiring the U.S. importer's permit number on labels of wine bottled outside the U.S. would constitute a non-tariff trade barrier.

A third commenter had no objection to either requiring the registry number or, for that matter, eliminating it. However, if required, this commenter believed it should be mandatory in all instances, for U.S. importers of foreign bottled wine, as well as American bottlers of wine. In addition to that, the commenter stated the registry number requirement should be stated whether a corporate *or* trade name was used.

The fourth commenter, the Wine Institute, representing 493 member wineries, stated that the registry number requirement should be eliminated. In addition to the reasons previously mentioned in their petition to remove the registry number requirement, the Wine Institute offered two more. One referred to their belief that the registry number on a label might lead a consumer into thinking that such a number represented some form of approval, similar to the "meat inspection seal on canned ham." Another point that was brought out in the Wine Institute's comment revolved around the issue of "label clutter." Since the registry number would convey no meaningful information to the consumer per se, the Wine Institute contends that it is useless information, and thus, as was brought out in the hearings subsequent to Notice No. 304 Amended, makes it more difficult to produce a wine label with aesthetic and graphic qualities.

Having analyzed the comments received in response to Notice No. 547, and having re-examined the rulemaking record subsequent to the publication of Notice No. 304 Amended (where the registry number requirement was first proposed), AFT now believes that further information on the label regarding the bottle is unnecessary. As a result of T.D. ATF-53, the address where the actual bottling took place must appear on the label in conjunction with the bottler's name. ATF believes this will provide the consumer with more precise information as to where the wine was actually bottled than the registry number. Should the need arise for a consumer to contact the responsible bottler (or importer), that information will still appear on the label.

Therefore, ATF is eliminating the registry number requirement from the regulations. With the elimination of the registry number requirement, the issue of a non-tariff trade barrier becomes moot. Since the elimination of the registry number becomes effective on August 7, 1985, the January 1, 1987 compliance date for bottler's registry number is no longer applicable.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect 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 provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant

economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the petition, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. Section 4.35 is amended by removing the reference to the registry number ", BW-CA-10001" in paragraph (c); and by revising paragraph (d) as follows:

§ 4.35 Name and address.

* * * * *

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on the basic permit or notice.

Signed: May 10, 1985.

W.T. Drake,

Acting Director.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85-16164 Filed 7-5-85; 8:45 am]

BILLING CODE 4810-31-M

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31 CFR Part 103

Amendments to Implementing Regulations Currency and Foreign Transactions Reporting Act

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: This final rule establishes a regulatory procedure through which the Secretary of the Treasury, exercising the authority conferred by 31 U.S.C. 5314, can require financial institutions in the United States to submit reports of financial transactions with foreign financial agencies. When the Secretary issues a reporting requirement in the nature of a regulation in accordance with the procedure established by this final rule, such regulation will specify the transactions, the time period, and the classes of financial institutions required to report.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., Office of the Assistant Secretary (Enforcement & Operations), (202/566-8022).

SUPPLEMENTARY INFORMATION:

Background

The Currency and Foreign Transactions Reporting Act (Pub. L. 91-508, Title II (Oct. 26, 1970), as amended, codified in 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep certain records and file certain reports. The reporting requirements are described in general terms in the statute. Title 31, United States Code, section 5313, authorizes the Secretary to require reports of domestic transactions involving monetary instruments or domestic currency. Section 5314 authorizes the Secretary to require reporting of accounts in, and transactions with, foreign financial agencies. Section 5316 authorizes the Secretary to require reports of exports or imports of monetary instruments exceeding $10,000.

Since implementing regulations first became effective in 1972, reporting of currency transactions under section 5313 has been limited to filing by domestic financial institutions of reports on transactions exceeding $10,000. (See 31 CFR 103.22.) The only reporting requirement imposed under section 5314 has been the disclosure of foreign financial accounts. (See 31 CFR 103.24.) The reports of exported or imported monetary instruments exceeding $10,000 required by section 5316 call for the disclosure of limited information only. (See 31 CFR 103.23.)

In the thirteen years since these reporting requirements were drafted, there has been a significant growth in international business dealings, including an enormous increase in the amounts of narcotics and other controlled substances smuggled into the United States, and the international transportation of funds that are profits of these illegal activities and serve to finance them. The government's responsibility to enforce the laws respecting these and other illegal activities demands the development of new regulatory techniques to provide necessary information without unduly burdening commerce.

The Secretary is authorized by 31 U.S.C. 5314 to require reports not only of accounts in, but also of transactions with, foreign financial agencies. Section 5314(a) authorizes the Secretary, to the extent he deems necessary, to require such reports to contain:

(1) The identity and address of participants in a transaction or relationship;

(2) The legal capacity in which a participant is acting;

(3) The identity of real parties in interest; and

(4) a description of the transaction.

In requiring such reports, however, the Secretary is directed to consider the need "to avoid impeding or controlling the export or import of monetary instruments and . . . to avoid burdening unreasonably a person making a transaction with a foreign financial agency." To this end, subsection 5314(b) authorizes the Secretary to prescribe:

(1) A reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) A foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a requirement or a regulation under this section;

(4) The kind of transactions subject to or exempt from a requirement or a regulation under this section; and

(5) Other matters the Secretary considers necessary to carry out this section or a regulation under this section.

In recognition of limits on the government's current ability to monitor adequately international transactions with foreign financial agencies, the Treasury Department published a notice of proposed rulemaking in the **Federal Register** on April 5, 1984, proposing a regulatory amendment to 31 CFR Part 103. (See 49 FR 13548.) That amendment, as adopted by this final rule, establishes a new procedure, authorized by 31 U.S.C. 5314, under which the Secretary may issue reporting requirements, in the nature of regulations, requiring limited classes of financial institutions to report limited numbers of financial transactions. Notice of such reporting requirements will either be published in the **Federal Register** or will be served personally upon members of the affected classes of financial institutions to provide actual notice in compliance with 5 U.S.C. 553.

This final rule does not require any financial institution to file any new report. Rather, it describes (i) the procedure for issuing future regulations containing reporting requirements, (ii) the classes of financial institutions that may be subject to future reporting requirements; (iii) the universe of information that may be subject to reporting requirements; (iv) the reasons for the new reporting requirements; (v) the authority for the issuance of the reporting requirements; and (vi) the limitations upon the scope and use of such future reporting requirements.

Future reporting requirements will be issued in response to money-flow and banking patterns of criminal, tax or regulatory interest to the Treasury.

Notice and Comment

The Treasury Department's notice of proposed rulemaking invited comments on the proposed rule for 60 days ending on June 4, 1984. The Department received 27 comments in response to that notice from 17 individual financial institutions, seven banking industry associations, one credit card company, the Department of Justice and the President's Commission on Organized Crime. Although several of these comments were received a few days after the close of the comment period, the Department has considered all of the comments received in formulating the final rule. The following summarizes the comments and sets forth Treasury's responses.

Cost of Compliance

Comment: Many commenters feared that complying with future reporting requirements would create onerous administrative costs either because new recordkeeping would have to be implemented or existing recordkeeping would have to be revised. This was especially felt to be the case as to reporting information not routinely recorded during the normal course of business. In addition, retrieving discrete information from a voluminous ongoing flow of data was argued to be prohibitively expensive.

Response: In light of these comments, Treasury has reviewed its anticipated information reporting needs and has decided to delete the authority under (proposed) 31 CFR 103.25(b) requiring the reporting of credit card charges. Otherwise, Treasury finds that there is a need to retain the authority to require reporting of the other types of information listed in new § 103.25(b).

Treasury has a statutory obligation in fashioning reporting requirements to consider the need to "avoid burdening unreasonably" international financial transactions. The Department notes that this final rule lists the universe of information for which reports may be required; however, ordinarily, only a few items from that list will be included in any given reporting requirement, as necessary. Moreover, Treasury anticipates that most of the information it selects already will be recorded by the financial institution during its normal course of business. Further, Treasury stands ready to work with the banking community to develop convenient and mutually acceptable reporting methods.

Because each reporting requirement will be tailored to specific information needs, no standard reporting form has been prepared. When the Secretary promulgates a reporting requirement, he may prescribe the manner in which the required information is to be reported. However, in response to comments received concerning the possible administrative burden on reporting institutions, Treasury has added a provision to the final rule that authorizes the Secretary to permit a designated institution to report in a different manner from that prescribed if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution; that a report in a different form will provide Treasury with all the information the Secretary deems necessary; and that submission of the information will not unduly hinder the effective administration of this Part.

As a result, the administrative cost of responding to any given future reporting requirement promulgated pursuant to this new procedure will not be unreasonably burdensome.

Treasury notes that the Department must take those steps it deems necessary to combat the rapidly increasing use of international financial transactions to further money laundering, narcotics trafficking and tax evasion. Any administrative burden that may be imposed on the banking community by reports required under this new procedure is reasonable in light of these important concerns.

Comment: Comments also were received to the effect that compliance costs would put those financial institutions required to report at a competitive disadvantage in relation to financial institutions not required to report.

Response: Since Treasury anticipates that its reporting requirements will be for discrete information over very limited periods of time, the resulting administrative cost will not be so great as to place responding institutions at a competitive disadvantage.

Over time, most financial institutions engaging in substantial international financial transactions probably will be subjected to one or more reporting requirements. Consequently, the costs of compliance will be shared by like competitors. To the extent that financial institutions are not subjected to reporting requirements it probably will be due to their lack of international activity. Such institutions will not receive a competitive advantage because they do not compete for international financial business.

Comment: Several commenters sought reimbursement from the government for the administrative costs of complying with future reporting requirements.

Response: The Currency and Foreign Transactions Reporting Act does not authorize the Treasury Department to expend public funds for such reimbursement. However, as indicated above, Treasury stands ready to work with the banking community to develop convenient and mutually acceptable reporting methods to mitigate the administrative burden on financial institutions.

Privacy Considerations

Comment: Many commenters felt that the future reporting requirements would violate the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*) by

requiring the disclosure of individually identifiable account information.

Response: The Right to Financial Privacy Act was enacted to prohibit government access for law enforcement purposes to information held by financial institutions without, in most cases, first providing notice and an opportunity to contest such access to the individual whose records were being sought. However, this prohibition does not apply to the disclosure of information "required to be reported in accordance with any Federal statute or rule promulgated thereunder." 12 U.S.C. 3413(d). Information reported pursuant to this new procedure clearly fits within the section 3413(d) exception.

Nevertheless, Treasury believes it would be inappropriate to use the reporting provisions of 31 U.S.C. 5314 to gather information to further ongoing law enforcement investigations of particular individuals. In such cases, those information collection procedures addressed by the Right to Financial Privacy Act would continue to apply. Treasury believes those procedures better balance the rights due individuals involved in disputes with the government and the legitimate demands of society that its laws be enforced.

Information collected under the new procedure should help uncover suspicious financial patterns that then can be investigated by way of established information collection procedures. In recognition of this purpose, the new procedure explicitly prohibits the imposition of future reporting requirements intended to further ongoing investigations of individuals.

Comment: Several commenters were concerned that future reporting requirements might violate the privacy laws of foreign countries, and that compliance would put financial institutions in violation of those laws, or drive financial business overseas to shield transactions from disclosure to the United States government.

Response: This regulatory procedure authorizes the reporting of information about transactions between domestic financial institutions and foreign financial agencies. It is not concerned with wholly foreign transactions. To the extent foreign financial agencies wish to conduct transactions that either originate or culminate within the United States, they are obliged to conduct such transactions in compliance with United States law. Treasury finds the nominal burden placed on such transactions to be justified by the strong national interests served by this regulatory procedure.

Treasury disagrees that the threat of future reporting requirements will have a deleterious effect on the ability of domestic financial institutions to compete with foreign financial agencies in the international financial market. No empirical substantiation for this concern has been offered. To the contrary, Treasury has perceived no impact on foreign business activity in the United States due to existing recordkeeping and reporting requirements, and sees no reason to believe that foreign businessmen or bankers will now forsake the American market out of fear of these limited reporting requirements.

Comment: Several comments suggested that internal bank customer privacy guidelines would require the disclosure of any future reporting requirements to affected customers which, in turn, would frustrate the purpose of the reporting requirements.

Response: Treasury anticipates that future reporting requirements will have limited durations commencing immediately upon receipt by the affected financial institutions. Consequently, even if internal privacy guidelines require notice to customers of these reporting requirements, such notice normally should not reach the customers until well into the short periods covered by the reporting requirements. The reporting periods should be short enough to minimize the likelihood that customers will find it worthwhile to disrupt their patterns of financial activity in order to avoid such reporting requirements.

Rulemaking Sufficiency

Comment: Several commenters argued that the proposed rule did not afford a meaningful opportuntity to comment upon the scope of future reporting requirements.

Response: Treasury believes that this rulemaking process provided ample opportunity to comment on the scope of future reporting requirements. The notice of proposed rulemaking clearly specified the universe of information proposed to be subject to future reporting requirements, and that universe has not been altered in this final rule except to delete certain categories of information, as discussed above.

In order to comply with the statutory mandate to avoid needless or unreasonable burdens on reporting institutions, the proposed rule contemplated that future information requests would be limited to discrete subsets of the universe of persons and transactions potentially subject to reporting. Narrowing future reporting requirements as contemplated by this rulemaking is consistent with the statutory mandate, but precludes a precise description of reporting requirements, because their nature depends on future events and conditions prevailing at the time of issuance. Merely because a given reporting requirement may be imposed on a narrower class of persons or transactions than could otherwise be subject to the reporting requirement does not make the notice of proposed rulemaking impermissibly vague. As a result, Treasury believes that this rulemaking process has given sufficient description of those persons and transactions that are subject to future reporting requirements.

Moreover, the adequacy of the notice of proposed rulemaking to air relevant issues concerning the scope of future reporting requirements is confirmed by the ample comments that were received in response to the notice of proposed rulemaking. Concerns were raised with regard to the breadth of information potentially subject to a reporting requirement, anticipated operational difficulties, costs, privacy issues, burdens on commerce, etc. Treasury discerns no difference between the concerns that have been expressed over the instant regulatory procedure and the concerns that might arise over future reporting requirements. They are one and the same, and have been adequately addressed through this rulemaking process.

Treasury believes the notice of proposed rulemaking adequately informed interested parties of the addition of a reporting requirement for financial institutions, identified the universe of persons and transactions that could be subject to future reporting requirements, explained the reasons why reports were necessary to carry out the purposes of the Act, identififed the authority for the requirement, and advised affected persons that a report would not be required until actual notice was given by Treasury. As a result, Treasury believes that this rulemaking process has given sufficient notice of the subjects and issues involved in this rule as well as any future regulations that might be issued as described in this rule.

Regulatory Impact Analysis

This regulatory amendment is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will

not have any 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 foreign markets. Consequently, a Regulatory Impact Analysis has not been prepared.

Regulatory Flexibility Analysis

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Almost all of the information that could be the subject of a reporting requirement is already being maintained in response to existing recordkeeping regulations. Given the focused nature of the contemplated reports, the clerical costs incurred by the specified group of financial institutions in filing the reports is anticipated to be relatively small. Consequently, a Regulatory Flexibility Analysis has not been prepared.

Paperwork Reduction Act

The collection of information requirements contained in the final Rule have been approved by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

(OMB Control No. 1505-0063)

Drafting Information

The principal author of this document was Terry Thiele, Office of the General Counsel, Department of the Treasury. However, personnel from other Treasury offices participated in its development.

List of Subjects in 31 CFR Part 103

Banks and banking, Currency, Electronic funds transfers, Foreign banking, Investigations, Law enforcement, Drug traffic control, Reporting requirements, Taxes.

Amendment

PART 103—[AMENDED]

31 CFR Part 103 is amended as set forth below:

1. The authority citation for Part 103 is revised to read as follows:

Authority: Sec. 21 of the Federal Deposit Insurance Act, Pub. L. 91-508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5322).

2. A new definition is added to 31 CFR 103.11 after the definition of *Foreign bank* to read as follows:

§ 103.11 [Amended]

* * * * *

Foreign bank. * * *

Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

* * * * *

3. Sections 103.25 and 103.26 are renumbered as sections 103.26 and 103.27 and, a new § 103.25 is added to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the **Federal Register**, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b).

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information.

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Wire or electronic fund transfers received by respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency—including the following information:

(i) Name of foreign financial agency;

(ii) Name, address and account number of account being credited or debited by respondent financial institution;

(iii) Name of respondent financial institution;

(iv) Date and amount of each transfer;

(v) Any other information normally appearing on respondent financial institution's internal wire or electronic fund transfer entries.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder.

(7) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.

(e) *Limitations.* (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(3) The Secretary shall not issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions that were both completed and reflected in its records prior to the date it received notice of the reporting requirement.

(Approved by the Office of Management and Budget under Control No. 1505-0063)

Dated: May 31, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-16007 Filed 7-5-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Eligibility

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations implement those provisions of the Veterans' Compensation and Program Improvements Amendments of 1984 which affect people eligible to receive benefits under the dependents' educational assistance program or the GI Bill. The regulations deal with situations when someone is eligible for educational assistance under more than one of the programs administered by the VA (Veterans Administration). These regulations will acquaint the public with the way in which the VA is implementing the new provisions of law.

EFFECTIVE DATE: March 2, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, D.C. 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 49858 and 49859 of the **Federal Register** of December 24, 1984 there was published a notice of intent to amend various regulations in order to implement some provisions of the Veterans' Compensation and Program Improvements Amendments of 1984. Interested people were given 30 days to submit any comments, objections or suggestions. The VA received no comments, objections or suggestions.

In an internal review of the proposal, however, it was discovered that the proposed change to § 21.4022(a) was in conflict with a provision of the proposed change to § 21.1022(a). The VA has rewritten § 21.4022(a) in order to eliminate that conflict. The remainder of the proposal has been made final without change.

The VA has made these regulations retroactively effective March 2, 1984. Retroactive effect is justified for the following reasons. Many of these regulations are liberalizing since they relieve several restrictions. These regulations are interpretive rules which construe the meaning of some of the provisions of Pub. L. 98-223.

Moreover, the VA finds that good cause exists for making these regulations, like the sections of law they implement, retroactively effective on March 2, 1984. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA has determined that these regulations are not major rules as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not cause a major increase in costs or prices for anyone. They will have an effect on the economy of less that $100 million annually. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that these regulations will 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. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these changes affect only individual benefit recipients. Furthermore, any impact will be the result of the underlying law. It will not result from the regulations themselves.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 7, 1985.

By direction of the Administrator.
Everett Alvarez, Jr.,
Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending 38 CFR Part 21 to read as set forth below:

1. Section 21.1022 is revised as follows:

§ 21.1022 Nonduplication—programs administered by the VA.

(a) *Chapters 32 and 34.* A person who is eligible for educational assistance under chapter 34 is not eligible for educational assistance under chapter 32. Certain veterans who are eligible for educational assistance under chapter 34 may waive that entitlement in order to receive educational assistance under chapter 32. See §21.1040(f). (38 U.S.C. 1602(1); Pub. L. 98-223

(b) *Chapter 34 and other programs administered by the VA.* An individual may not receive educational assistance allowance under 38 U.S.C. ch. 34 concurrently with benefits under any of the provisions of law listed in this paragraph for the same program. If a veteran is eligible for educational assistance under any of the provisions of law listed in this paragraph, he or she must elect which benefit he or she wishes to receive for each program of education the veteran wishes to pursue. These provisions of law are:

(1) 38 U.S.C. ch. 31,
(2) 38 U.S.C. ch. 35,
(3) 10 U.S.C. ch. 107,
(4) Section 903 of the Department of Defense Authorization Act, 1981, or
(5) The Hostage Relief Act of 1980. (38 U.S.C. 1781; Pub. L. 98-223)

2. In § 21.1040, paragraphs (a)(1), (b) and (e) are revised and paragraph (f) is added to read as follows. The heading of paragraph (a) is included for the convenience of the public

§ 21.1040 Basic eligibility.

* * * * *

(a) *Service.* * * *

(1) Served on active duty (including active duty for training that qualifies as active duty under §21.1021(b)) for a continuous period of 181 days or more, any part of which occurred after January 31, 1955, and before January 1, 1977. (38 U.S.C. 1602(1), 1652; Pub. L. 98-223)

* * * * *

(b) *Periods excluded.* In computing the 181 days service, there will be excluded any period during which he or she:

(1) Was assigned full time by the service department to a civilian school for a course of education which was substantially the same as established courses offered to civilians.

(2) Served as a cadet or midshipman at one of the service academies, or

(3) Is not entitled to credit for service for the periods of time specified in § 3.15 of this chapter. (38 U.S.C. 1602(1), 1652; Pub. L. 98-223)

* * * * *

(e) *Persons on active duty.* Educational assistance may be afforded a person while on active duty if he or she:

(1) Has not waived eligibility through election to receive educational assistance under 38 U.S.C. ch. 32 (as provided in paragraph (f) of this section), and

(2) Meets the requirements applicable to a discharged veteran under paragraphs (a) and (b) of this section, and, if the serviceperson has had a previous period of active duty upon which his or her eligibility is based, meets the requirements applicable to a discharged veteran under paragraph (d) of this section. (38 U.S.C. 1602(1), 1652; Pub. L. 98-223)

(f) *Waiver of eligibility through election to receive educational assistance under 38 U.S.C. ch. 32.* (1) A veteran who is eligible for educational assistance under 38 U.S.C. ch. 34 may waive that eligibility through making an election to receive educational assistance under 38 U.S.C. ch. 32. The veteran can make that election only if he or she—

(i) Served a period of active duty for training for at least 181 consecutive days at least 1 day of which was before January 1, 1977, and

(ii) Began the qualifying period of active duty of 1 consecutive year or more after December 31, 1976.

(2) If the veteran makes an election and negotiates a check for educational assistance under 38 U.S.C. ch. 32, the veteran's election is irrevocable. He or she is no longer eligible for educational assistance under 38 U.S.C. ch. 34 (38 U.S.C. 1602(1), 1652; Pub. L. 98-223)

3. Section 21.3022 is revised as follows:

§ 21.3022 Nonduplication—programs administered by the VA.

A person who is eligible for educational assistance under 38 U.S.C. ch. 35 and is also eligible for assistance under any of the provisions of law listed in this section, must elect which benefit he or she will receive for each program of education that person will pursue. The election is subject to the conditions specified in § 21.4022. The provisions of law are:

(a) 38 U.S.C. ch. 31.
(b) 38 U.S.C. ch. 32.
(c) 38 U.S.C. ch. 34.
(d) 10 U.S.C. ch. 107.
(e) Section 903 of the Department of Defense Authorization Act, 1981, or
(f) The Hostage Relief Act of 1980. (38 U.S.C. 1781; Pub. L. 98-223)

§ 21.3023 [Amended]

4. Section 21.3023 is amended by removing the words "wife, husband, widow or widower" and inserting the words "spouse or surviving spouse" in the heading and the text of paragraph (d).

§ 21.3024 [Amended]

5. Section 21.3024 is amended as follows:

A. By removing the words "child, wife, husband, widow or widower" and inserting the words "child, spouse or surviving spouse" in the heading of paragraphs (a)(1) and (b)(1).

B. By removing the words "veteran, wife, husband and child—widow, widower and child" and inserting the words "veteran, spouse and child—surviving spouse and child" in the heading of paragraphs (a)(2) and (b)(2).

C. By removing the words "widow or widower" and inserting the words "or surviving spouse" in the text of paragraphs (a)(2) and (b)(2).

D. By removing the words "widow, or widower" and inserting the words "surviving spouse" in the text of paragraphs (a)(3).

6. In § 21.4020, paragraph (a)(4) is revised and paragraphs (a) (5), (6) and (7) are added as follows:

§ 21.4020 Two or more programs.

(a) * * *

(4) 38 U.S.C. chs. 32, 34, 35 and 36 and the former chapter 33;

(5) 10 U.S.C. ch. 107;

(6) Section 903 of the Department of Defense Authorization Act, 1981, and

(7) The Hostage Relief Act of 1980. (38 U.S.C. 1795(a); Pub. L. 98-223)

* * * * *

6. In § 21.4022, the heading is changed and paragraph (a) is revised as follows:

§ 21.4022 Nonduplication—programs administered by the VA.

(a) *Election.* A veteran or eligible person who is eligible for education or

training under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person must elect which benefit he or she will receive for each program of education he or she wishes to pursue. Except for an election between 38 U.S.C. ch. 32 and ch. 34 which is irrevocable once a check has been negotiated, the person may reelect at any time. The provisions of law are:

(1) 38 U.S.C. ch. 31,

(2) 38 U.S.C. ch. 32,

(3) 38 U.S.C. ch. 34,

(4) 38 U.S.C. ch. 35,

(5) 38 U.S.C. ch. 107.

(6) Section 903 of the Department of Defense Authorization Act, 1981, or

(7) The Hostage Relief Act of 1980. (38 U.S.C. 1781; Pub. L. 98-223)

* * * * *

[FR Doc. 85-16136 Filed 7-5-85; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Panama

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Panama.

SUMMARY: Pursuant to an agreement with the postal administration of Panama, the Postal Service intends to begin Express Mail International Service with Panama at postage rates indicated in the tables below. Service is scheduled to begin on August 7, 1985.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, [202] 245-4414.

SUPPLEMENTAL INFORMATION: By a notice published in the **Federal Register** on May 31, 1985 [50 FR 23146], the Postal Service announced that it was proposing to begin Express Mail International Service to Panama. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin International Express Mail Service with Panama on August 7, 1985 at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552[a], 39 U.S.C. 401, 404, 407, 408.

Panama.—Express Mail International Service

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	34.80	2	26.80
3	38.60	3	30.60
4	42.40	4	34.40
5	46.20	5	38.20
6	50.00	6	42.00
7	53.80	7	45.80
8	57.60	8	49.60
9	61.40	9	53.40
10	65.20	10	57.20
11	69.00	11	61.00
12	72.80	12	64.80
13	76.60	13	68.60
14	80.40	14	72.40
15	84.20	15	76.20
16	88.00	16	80.00
17	91.80	17	83.80
18	95.60	18	87.60
19	99.40	19	91.40
20	103.20	20	95.20
21	107.00	21	99.00
22	110.80	22	102.80
23	114.60	23	106.60
24	118.40	24	110.40
25	122.20	25	114.20
26	126.00	26	118.00
27	129.80	27	121.80
28	133.60	28	125.60
29	137.40	29	129.40
30	141.20	30	133.20
31	145.00	31	137.00
32	148.80	32	140.80
33	152.60	33	144.60
34	156.40	34	148.40
35	160.20	35	152.20
36	164.00	36	156.00
37	167.80	37	159.80
38	171.60	38	163.60
39	175.40	39	167.40
40	179.20	40	171.20
41	183.00	41	175.00
42	186.80	42	178.80
43	190.60	43	182.60
44	194.40	44	186.40

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-16152 Filed 7-5-85; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6607

[F-82319]

Alaska; Partial Revocation of Public Land Order Nos. 5150, 5179, 5180 and 5186; Withdrawal of Public Lands for Addition to the Arctic National Wildlife Refuge

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes four public land orders as they affect approximately 325,000 acres of public lands withdrawn for a transportation and utility corridor, classification, and protection of the public interest. This order simultaneously withdraws the same lands from surface entry and mining but not mineral leasing and makes it a part of the Arctic National Wildlife Refuge (ANWR) for a 20-year period. However, oil and gas leasing is prohibited by the Alaska National Interest Lands Conservation Act unless and until authorized by an Act of Congress.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271-5060.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and subsection 1326(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 94 Stat. 2371, 2488; 16 U.S.C. 3213(a), it is ordered as follows:

1. Public Land Order Nos. 5150, 5179, 5180 and 5186, as amended, modified and corrected are hereby revoked, insofar as they affect the following described lands:

Fairbanks Meridian (Unsurveyed)

T. 37 N., R. 17 E., fractional.
T. 36 N., R. 18 E.,
  Secs. 1 to 18, inclusive.
T. 37 N., R. 18 E., fractional.
T. 36 N., R. 19 E.
T. 37 N., R. 19 E., fractional,
  Sec. 28, those lands lying outside of ANWR;
  Secs. 29 to 33, inclusive;
  Sec. 34, those lands lying outside of ANWR.
T. 36 N., R. 20 E.,
  Secs. 1 to 4, inclusive;
  Secs. 5 and 6, those lands lying outside of ANWR;
  Secs. 7 to 36, inclusive.
T. 36 N., Rs. 21 to 24 E.

T. 35 N., R. 25 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 25 E.
T. 35 N., R. 26 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 26 E.
T. 35 N., R. 27 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 27 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 28 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 28 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 29 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 29 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 30 E., fractional,
Secs. 6, 7, and 18.
T. 36 N., R. 30 E., fractional,
Secs. 19, 30, and 31.

Umiat Meridian (Unsurveyed)

T. 14 S., R. 36 E.,
Secs. 30, 31, and 32, those lands lying outside of ANWR.
T. 15 S., R. 36 E.,
Sec. 5, those lands lying outside of ANWR;
Secs. 6 and 7;
Secs. 8 and 17, those lands lying outside of ANWR;
Secs. 18, 19 and 20;
Secs. 21 and 28, those lands lying outside of ANWR;
Secs. 29 to 32, inclusive;
Sec. 33, those lands lying outside of ANWR.
T. 16 S., R. 36 E.,
Sec. 4, those lands lying outside of ANWR;
Secs. 5 to 8, inclusive;
Secs. 9 and 16, those lands lying outside of ANWR;
Secs. 17 to 20, inclusive.
Secs. 21, 22, 25, 26, and 27, those lands lying outside of ANWR;
Secs. 28 to 36, inclusive.
T. 17 S., R. 36 E., fractional.
T. 16 S., R. 37 E.,
Secs. 31 to 34, inclusive, those lands lying outside of ANWR;
T. 17 S., R. 37 E., fractional,
Secs. 1 to 4, inclusive, those lands lying outside of ANWR;
Secs. 5 and 6.

The areas described aggregate approximately 325,000 acres.

2. Effective immediately subject to valid existing rights, the lands described in paragraph 1 are hereby withdrawn from settlement, sale, location, and entry under the public land laws, including the United States mining laws but not the mineral leasing laws. However, pursuant to section 1003 of ANILCA, 16 U.S.C. 3143, no leasing or other development leading to production of oil and gas shall be undertaken until authorized by an Act of Congress. The lands are hereby reserved for the U.S. Fish and Wildlife Service as an addition to ANWR as established by Public Land Order No 2214, enlarged by subsection 303(2) of ANILCA, 94 Stat. 2371 at 2390, and by donation from the State of Alaska under subsection 1302(i) of ANILCA, 16 U.S.C. 3192.

3. The State of Alaska concurred in the decision to add these lands to ANWR.

4. The above described lands are subject to all the terms and conditions of Public Land Order No. 2214 as modified and amended by ANILCA.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-16195 Filed 7-5-85; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22190; File No. S7-16-85]

Request for Comments on Issues Concerning Internationalization of the World Securities Markets

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period for concept release.

SUMMARY: The Commission has extended from June 30, 1985 to September 30, 1985 the deadline for submitting comments on the internationalization concept release which the Commission published on April 18, 1985 (50 FR 16302, April 25, 1985).

DATE: Comments to be received by September 30, 1985.

ADDRESS: Persons wishing to submit comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments should refer to File No. S7-16-85 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272-2414, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

The Commission has extended from June 30, 1985 to September 30, 1985 the deadline for submitting comments in response to the Commission's April 18, 1985 request for comments on issues concerning the internationalization of the world securities markets.[1] The Commission has extended the deadline in order to afford an additional opportunity for public comment.

By the Commission.

John Wheeler,

Secretary.

June 28, 1985.

[FR Doc. 85-16130 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities and Exchange Act Release No. 21958 (April 18, 1985), 50 FR 16302.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

Proposed Customs Regulations Relating to Prior Disclosures of Violations of 19 U.S.C. 1592

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide for further clarifications and changes to the regulations relating to prior disclosures of violations of 19 U.S.C. 1592. The document would provide that a person is presumed to have knowledge of the commencement of a formal investigation of a violation if, before the claimed prior disclosure of the violation, an import specialist, regulatory auditor, inspector or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person concerning the type of or circumstances of the disclosed violation. The document also would provide that a prior disclosure may not be made after a determination by any Customs officer that there is reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, and that the Customs officer provides notice to the person.

These proposed amendments are necessary to provide for more effective enforcement of the regulations concerning 19 U.S.C. 1592 violations.

DATE: Comments must be received on or before September 6, 1985.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani or Charles D. Ressin, Commercial Fraud & Negligence Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) provides for penalties and penalties procedures when by fraud, gross negligence or negligence, merchandise is entered, introduced, or attempted to be entered or introduced into the commerce of the U.S., by means of any material false document, written or oral statement or act, and/or any material omission; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means.

Section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides for the remission or mitigation of fines, penalties, and forfeitures by the Secretary of the Treasury.

By T.D. 84-18, published in the **Federal Register** on January 13, 1984 (49 FR 1672), Customs amended the regulations relating to section 592 penalty and penalty procedures to, among other things, clarify the requirements and criteria applicable to prior disclosures of violations of section 592. As amended by T.D. 84-18, § 162.74(a), Customs Regulations (19 CFR 162.74(a)), provides that a prior disclosure may be made if the person concerned discloses the circumstances of a violation in writing to the district director before, or without knowledge of, the commencement of a formal investigation, and makes a tender of any actual loss of duties. Experience gained over the past year, however, reveals that further clarification and changes to § 162.74 are needed.

Section 162.74(f), Customs Regulations (19 CFR 162.74(f)), as amended by T.D. 84-18, provides that a person who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. Pursuant to this section, a person is presumed to have had knowledge of the commencement of a formal investigation of a violation of § 592 if before the claimed prior disclosure of the violation:

(1) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

The presumption of knowledge may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

Section 162.74(f) is subject to the interpretation that the presumption of knowledge of the commencement of a formal investigation is limited to those circumstances where a Customs investigating agent, and not other Customs personnel, notifies the person of the type of or circumstances of a violation of section 592. To provide for more effective efforcement of the prior disclosure regulations, Customs is proposing that this presumption be extended to those circumstances where an import specialist, regulatory auditor, inspector, or other Customs officer, having reasonable cause to believe that there has been a violation of section 592, so notifies the person(s) concerning the type of or circumstances of the disclosed violation. Accordingly, it is proposed to amend § 162.74(f) to include this provision.

Section 162.74(g), Customs Regulations (19 CFR 162.74(g)), as amended by T.D. 84–18, provides that a prior disclosure may not be made after a determination by an authorized Customs officer that there is resonable cause to believe that there has been a violation of section 592 and that a claim for monetary penalty shall be issued without commencement of a formal investigation. Such determination is evidenced by any one or more of the following:

(1) By the issuance of a per-penalty notice;

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the U.S. or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation; or

(4) In the case of the seizure of merchandise under section 592, by the act of seizure.

It has now been determined that the existing wording of this regulation unduly restricts Customs in the performance of its enforcement duties. The determination as to whether there exists reasonable cause to believe a violation of section 592 has occurred appears to be limited to only certain authorized Customs officers. Often, however, this determination can be made by any Customs officer. Further, § 162.74(g)(3) is limited to situations which generally involve only inspectors, thus denying other Customs officers who may have detected the violation from providing oral or written notification to the violator.

To remedy this problem Customs is proposing that § 162.74(g) be amended to clarify that a prior disclosure will be precluded, notwithstanding the fact that a formal investigation has not been commenced, after *any* Customs officer determines that there is a violation of section 592, and gives notice as evidenced by the four outlined circumstances. The violator, however, may still make a prior disclosure of the circumstances of a violation which has not been discovered by Customs.

It is noted that § 162.74, as amended by T.D 84–18, contains an error in paragraph (a)(1), in which parenthetical reference is made to "§ 162.71(e) of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)". The reference to section 592 inside the parenthesis should be removed and a reference to Part 162 inserted, in its place. The correct reference in the parenthesis should be to § 162.71 of Part 162.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66) sections 466, 584, 592, 613, 618, 46 Stat. 718, 748, 750, as amended 757, as amended, 759 (19 U.S.C. 1466, 1584, 1592, 1613, 1618).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other customs offices participated in its development.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Administrative practice and procedures, Penalties.

Proposed Amendments

It is proposed to amend Part 162, Customs Regulations (19 CFR Part 162), as set forth below.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. It is proposed to amend § 162.74(a)(1) by removing the words "section 592, Tarriff Act of 1930, as amended (19 U.S.C. 1592)" inside the parentheses, and inserting, in their place the words "this Part."

2. It is proposed to amend § 162.74 by redesignating paragraphs (f)(1) and (f)(2) as paragraphs (f)(2) and (f)(3), respectively, and by adding a new paragraph (f)(1), and by revising paragraph (g), to read as follows:

§ 162.74 Prior disclosure.

* * * * *

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation:

(1) An import specialist, regulatory auditor, inspector or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person

concerning the type of or circumstances of the disclosed violation; or

* * * * *

(g) *No prior disclosure after Customs discovery.* Notwithstanding that a formal investigation has not been commenced, a prior disclosure of the circumstances of a violation of 19 U.S.C. 1592, is precluded after a determination by any Customs officer that there is reasonable cause to believe that such violation has been committed. Such a determination shall be evidenced by one of the following:

(1) By the issuance of a pre-penalty notice;

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) By oral or written notification to the alleged violator by the Customs officer who detected the violation; or

(4) By the act of seizure, under 19 U.S.C. 1592(c)(5), of the merchandize involved in the violation.

William von Raab,

Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16137 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 177

Proposed Revision of Guidelines Concerning Tariff Classification of Imported Backpacking Tents

AGENCY: U.S. Customs Service.

ACTION: Proposed revision of guidelines; solicitation of comments.

SUMMARY: Pursuant to a court decision that recognized backpacking as a sport, Customs developed a set of guidelines to be used to determine which imported backpacking tents qualify as sports equipment for tariff purposes. Those guidelines established parameters concerning the material, capacity, dimensions, and weight of tents. However, it has come to Customs attention that technological advances involving tent material and construction methods may have rendered the existing guidelines obsolete. Tents now manufactured for purposes other than backpacking may qualify as backpacking tents using these guidelines. This document proposes new guidelines for the classification of backpacking tents and invites public comment on these guidelines.

DATE: Comments (preferably in triplicate) must be received on or before September 6, 1985.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Evelyn Suarez, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is currently reviewing its guidelines used to determine whether or not imported backpacking tents qualify as sports equipment for tariff classification purposes. those guidelines, published in C.S.D. 79-108 (August 21, 1978), are as follows:

(1) Backpacking tents must be composed of dacron or nylon.

(2) Such tents must be designed for no more than 4 persons.

(3) If designed for 1 or 2 persons, the tents must weigh no more than 10 pounds, including all accessories necessary to pitch the tent, and have a carry size of no more than 24 inches in length and 8 inches in diameter.

(4) If designed for 3 or 4 persons, the tents must weigh no more than 15 pounds, including all accessories necessary to pitch the tent, and have a carry size of no more than 36 inches in length and 12 inches in diameter.

Tents meeting these guidelines are currently classified as sport equipment, not specially provided for, in item 735.20, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a rate of duty of 5.52% ad valorem. Prior to the issuance of these guidelines, Customs had been classifying backpacking tents under item 389.60, TSUS, a residual provision for articles of textile materials. However, in *The Newman Importing Co., Inc.* v. *United States,* 76 Cust. Ct. 143, C.D. 4648 (1976), the court held that backpacking was a sport and tents used in pursuit of backpacking could be considered sports equipment. Consequently, it became necessary to distinguish between tents used for backpacking and tents designed for other purposes. Accordingly, Customs developed the guidelines set forth in T.D. 79-108 for backpacking tents.

Since those guidelines were issued in 1978, technological advances in tent material and construction methods have occurred which permit tent manufacturers to produce lightweight camping tents for general recreational use, so-called family or car camping tents. These lightweight camping tents fall within the specifications of the 1978 guidelines and therefore, for Customs purposes, are classified in item 735.20, TSUS, although the tents were not "specially designed" for backpacking within the meaning of *Newman Importing,* supra. Tents not designed as sports equipment for backpacking should be classified under the provision for tents and sleeping bags, of manmade fiders, in item 386.11, TSUS, at a current rate of duty of 15% ad valorem.

Proposed Guidelines

To qualify for classification as "sport equipment" under item 735.20, TSUS, Customs is of the opinion that a tent must meet the following guidelines:

(1) It must be specially designed for the sport of backpacking.

(2) It must be composed of nylon or polyester fabric.

(3) If designed for 1 or 2 persons, the tent must meet the following criteria:

(a) Have a floor area of 45 square feet or less;

(b) Weigh 8½ pounds or less, including tent bag and all accessories necessary to pitch the tent;

(c) Have a carry size of 30 inches or less in length and 9 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 1,900 cubic inches.

(4) If designed for 3 or 4 persons, the tent must meet the following criteria:

(a) Have a floor area of 65 square feet or less;

(b) Weigh 12 pounds or less, including tent bag and all accessories necessary to pitch the tent;

(c) Have a carry size of 30 inches of less in length and 10 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 2,350 cubic inches.

Any tent with a floor space of more than 65 square feet and a standing height of more than 60 inches is a tent designed for general recreational use.

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on regular business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

Because the proposed revisions if adopted, could change the amount of duties assessed on the articles, and could be of interest to the domestic industry as well as importers, Customs is publishing this notice and providing an opportunity to comment as provided by section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16140 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-10]

Drawbridge Operation Regulations; Company Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the vertical lift bridge over Company Canal, mile 8.1, on LA24 at Bourg, Terrebonne Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. The draw would continue to open on signal from 6 a.m. to 10 p.m. Presently, the draw is required to open on signal at all times.

This proposal is being made because of the infrequent requests for opening the draw during the proposed advance notice period. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 22, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 5.2 feet above high water and 8.2 feet above low water. Navigation through the bridge consists of commercial boats (largely oil related), shrimp/fish boats and recreational craft. Data submitted by the LDOTD show that this traffic through the bridge is infrequent, during the period under discussion, as noted below:

(1) In 1984, between 10 p.m. and 6 a.m., the proposed advance notice period, there were 139 bridge openings—an average of 11.6 openings per month or an average of one opening about every three days. In 1983, for the same time period, there were 137 bridge openings—an average of 11.4 openings per month or an average of one opening about every three days.

(2) The total number of openings in 1984, 1983, 1982, 1981, and 1980 were 1154, 1142, 1250, 1513, and 1180, respectively.

Considering the few openings involved between 10 p.m. and 6 a.m., the Coast Guard feels that the current on site attendance at the bridge between 10 p.m. and 6 a.m. is not warranted and that the bridge can be placed on a four hours advance notice for an opening during this period. This will provide relief to the bridge owner, while still providing for the reasonable needs of navigation.

The advance notice for opening the draw would be given by placing a collect call during normal working hours to the LDOTD office in Houma, Louisiana, telephone (504) 851-0900 or at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233-7404.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the advance notice period of 10 p.m. to 6 a.m., as evidenced by the 1983 and 1984 bridge opening statistics which show that the bridge averaged one opening about every three days. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulation, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

§ 117.438a [Redesignated as § 117.438]

2. Section 117.438a is redesignated as § 117.438, the text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§117.438 Company Canal.

* * * * *

(b) The draw of the S24 bridge, mile 8.1 at Bourg, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: June 24, 1985.

T.T. Matteson,

Acting Captain, U.S. Coast Guard, Commander, 8th Coast Guard District.

[FR Doc. 85-16026 Filed 7-5-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Extension of Reporting Time for Defaults on Loans

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend the reporting requirement on defaulted vendee loans that have been purchased by investors with a repurchase agreement. Currently holders of such loans must submit to the VA a notice of default within 30 days after a loan has become two full installments in default. It is proposed to extend the reporting period to 60 days.

DATES: Comments must be received on or before August 5, 1985. The VA proposed to make these regulations effective 30 days after publication as final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holdidays) until August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420, (202) 389-3668.

SUPPLEMENTARY INFORMATION: When a VA-guaranteed loan goes into default and is subsequently foreclosed, the VA has the option of either paying the guaranteed portion of the loan, or if it is in the best interest of the VA, to acquire and resell the property securing the loan. When the VA resells the property, many times it is with VA financing as a vendee loan. Periodically vendee loans are sold to investors. These loans, known as "4600" loans, are sold to investors with a repurchase agreement pursuant to 38 CFR 36.4600. If the loan goes into default and the default cannot be cured, the VA takes back the loan and makes a case payment to the holder of the loan consisting of the price paid to the VA when the loan was purchased, less repayments received by the holder which were applied to the principal, plus any advances made by the holder to cover maintenance, repairs, taxes, assessments, etc.

As part of the repurchase agreement, purchases of loans sold by the VA must agree to report to the VA within 30 days after the loan has become two full installments in default. The VA is now proposing to extend the reporting time to 60 days. The additional 30 days will provide holders more time to service defaulted loans and effect cures of them. The result of the extended reporting period should be less defaults reported to the VA which are subsequently cured. This process will save the holder and the VA time and paperwork.

Therefore, it is proposed to change 38 CFR 36.4600(c)(1) to require holders of "4600" loans to report defaults within 60 days after a loan is two installments late instead of 30 days.

Ultimately it is up to the holder of the loan when to report a default to VA, within the prescribed reporting period, depending on the individual circumstances involved in each loan. If the loan is determined insoluble, holders should continue to report the default to VA as soon as possible.

The Administrator hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, Untied States Code, sections 601-612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604. These proposed regulations will have no impact on small organizations or small government entities. Small businesses may be affected slightly by the proposed regulations due to relaxation of the reporting requirement, but not to an economically significant degree.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regultaion, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other 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.

(Catalog of Federal Domestic Assistance Program Number 64.114)

These amendments are proposed under authority granted the Administrator by sections 210(c) and 1820 of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: June 19, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administratbr.

§ 36.46000 [Amended]

In 38 CFR Part 36, LOAN GUARANTY, § 36.4600 is amended by removing the word "hereby" from paragraph (a); by changing the number "30" to "60" in the text and adding the cite "(38 U.S.C. 210(c), 1820)" at the end in paragraph (c)(1); and by changing the title "Secretary of Housing and Urban Development" to "Federal Emergency Management Agency" in paragraph (c)(3).

[FR Doc. 85-16135 Filed 7-5-85; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1132

[Ex Parte No. 445; Sub-1]

Intramodal Rail Competition

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules; notice of Oral Argument.

SUMMARY: The Commission has proposed alternate sets of rules to govern its handling of competitive access issues, *i.e.*, joint rates and through routes, reciprocal switching, and terminal trackage rights [50 FR 21319, April 2, 1985]. One set of rules has been proposed in an agreement between the Association of American Railroads (AAR) and the National Industrial Transportation League (NITL). This was clarified by a later agreement between AAR and the Chemical Manufacturers Association (CMA), and will be referred to as the AAR/NITL/CMA proposal. A second set of rules has been proposed by Railroads Against Monopoly (RAM), and will be referred to as the RAM proposal. The underlying issues are discussed in the Commission's decision served March 28, 1985. Because of the importance of the proposed guidelines, oral argument will be held on July 18, 1985, in Washington, D.C.

DATES: Oral argument will be held beginning at 9:30 a.m. on July 18, 1985. People seeking to participate must contact the appropriate coordinators by July 10, 1985. By July 12, 1985, the coordinators will advise the Commission's Secretary of those persons who will participate in the oral argument.

ADDRESSES: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Avenue, NW., Washington, D.C.

If you desire to participate:

(i) In support of the AAR/NITL/CMA proposal, please contact: R. Eden Martin, 1722 Eye Street, NW., Washington, DC 20036, (202) 347-7170.

(ii) In support of the RAM proposal, please contact: John J. Mullenholz, 900 17th Street, NW., Washington, DC 20006, (202) 463-8400.

(iii) In opposition to the AAR/NITL/CMA proposal or RAM proposal, please contact: Louis E. Gitomer, Interstate Commerce Commission, Washington, DC 20423, (202) 275-7245.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The Commission has proposed to adopt rules to govern its handling of competitive access issues. More than 60 parties have filed comments. Due to the differing positions taken and the significance of this proceeding, parties will be given an opportunity to argument their written comments. In holding this oral argument, the Commission is seeking further clarification of the issues raised in the written comments and replies.

The oral argument will be divided into two parts: (i) Argument on the AAR/NITL/CMA proposal; and (ii) argument on the RAM proposal.

The first part of the argument is scheduled for 80 minutes. The first 40 minutes will be devoted to argument in favor of the AAR/NITL/CMA proposal. This time will be coordinated by R. Eden Martin. No participant will be allotted less than 10 minutes. The second 40 minutes will be devoted to argument in opposition to the proposal. This time will be coordinated by Louis E. Gitomer. Again, no participant will be allotted less than 10 minutes.

The second part of the argument is scheduled for 80 minutes. The first 40 minutes will be devoted to argument in favor of the RAM proposal. This time will be coordinated by John J. Mullenholz. No participant will be allotted less than 10 minutes. The second 40 minutes will be devoted to argument in opposition to this proposal. This time will be coordinated by Louis E. Gitomer. Again, no participant will be allotted less than 10 minutes.

It is recognized that not all of the parties who filed comments and replies will be able to participate in the oral argument. However, through consolidation of positions via a single spokesperson, all parties should be able to present their views to the Commission. At the time of argument, participants may supplement their oral presentations with written remarks.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: June 28, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-16190 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Amendments to Programmatic Memoranda of Agreement Regarding Planning and Leasing Activities of the National Park Service

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice provides information about and invites comments on proposed amendments to existing Programmatic Memoranda of Agreement. The amendments will shift some responsibility for implementing the Agreements from the Associate Director, Cultural Resources, to the Regional Directors of the National Park Service.

DATE: Comments due August 7, 1985.

ADDRESS: Thomas F. King, Director, Office of Cultural Resource Preservation, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., Room 803, Washington DC 20004, Attention Michael Quinn. Telephone: (202) 786-0505.

Dated: July 1, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85-16161 Filed 7-5-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Arizona Wellton-Mohawk Irrigation and Drainage District; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all federal cost-share payments under the Wellton-Mohawk Irrigation and Drainage District (WMIDD) Irrigation Improvement Program have been made primarily for the purposes of water conservation and reduction of the Wellton Mohawk return flow to the Colorado River system. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. This determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Project Manager, Wellton Projects Office, Route 1, Box 1, Wellton, Arizona 85356, (602) 785-3342, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1984, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under authorized conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The WMIDD Irrigation Improvement Program is authorized under Pub. L. 93-320, Title I. It is funded through federal appropriations to provide financial assistance to owners of selected farmlands to help them develop and install various water conservation practices on their land. Cost-share payments are made exclusively to improve the water use efficiency on the farms, with a subsequent reduction in the WMIDD ground water return flow to the Colorado River system, a priority objective of Pub. L. 93-320, Title I, the *Colorado River Basin Salinity Control Act of 1974.*

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Department Regulation No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individual, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A WMIDD Irrigation Improvement Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the General Manager, Wellton-Mohawk Irrigation and Drainage District, Route 1, Box 19, Wellton, Arizona 85356.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the WMIDD Irrigation Improvement Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under the program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits recipients to exclude from gross income, for federal income tax purpose, all or part of such payments made under the WMIDD Irrigation Improvement Program after September 30, 1979.

Signed at Washington, D.C., on July 1, 1985.

John R. Block,

Secretary.

[FR Doc. 85-16118 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-01-M

[Docket No. 85-325]

Rangeland Grasshopper and Mormon Cricket; Declaration of Emergency Because of Rangeland Grasshopper and Mormon Cricket

Whereas, a serious infestation of rangeland grasshopper and Mormon cricket is occurring in parts of Arizona, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and may occur in California, Kansas, and Nevada, and

Whereas, these ravenous insects are capable of rapidly destroying rangeland and of moving onto adjacent cropland where they can quickly inflict catastrophic damage to thousands of acres of cropland,

Whereas, outbreaks of grasshoppers resulting from favorable weather conditions for survival have exceeded projections and funds previously reprogrammed for controlling grasshoppers,

Now, therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens segments of agricultural production industries of this country, particularly the grain, potato, bean, hay and livestock industries, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to be conducted on Federal, State, and privately owned rangeland to control and to prevent the dissemination of the rangeland grasshopper and Mormon cricket.

Effective date: This declaration of emergency shall become effective June 18, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-16167 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Southwestern Region; South Kaibab Grazing Advisory Board; Meeting

The South Kaibab Grazing Advisory Board will meet at 9:00 a.m., Friday, August 2, 1985, at the Supervisor's Office, 800 South 6th Street, Williams, Arizona.

The purpose of this meeting is:

1. Development of allotment management plans.
2. Utilization of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify: Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona 86046. Telephone: (602) 635-2681.

Those attending may express their views when recognized by the chairman.

June 26, 1985.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 85-16165 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on August 7, 1985, at the Quality Inn, Route 1, South, North Brunswick, New Jersey. The purpose of the meeting is to select Committee activities for the program year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 2, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16098 Filed 7-5-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-402]

Antidumping Duty Order; Certain Heavy Salted Codfish From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The United Stated Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that certain dried heavy salted codfish from Canada is being sold at less than fair value and that sales of this product are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after January 29, 1985, the date on which the Department published its preliminary determination of sales at less than fair value in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made after the date of publication of this antidumping duty order in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are currently provided for in item 111.22 of the *Tariff Schedules of the United States, Annotated* (TSUSA). The term "certain dried heavy salted codfish" covers dried heavy salted codfish, which may be whole, processed by removal of heads, fins, viscera, scales, vertebral columns, or any combination thereof but not otherwise processed, not in airtight containers.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 29, 1985, the Department published its preliminary determination that there was reason to believe or suspect that certain dried heavy salted codfish from Canada was being sold in the United States at less than fair value. On June 4, 1985, the Department published its final determination that these imports were being sold at less than fair value.

On June 27, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that imports of certain dried heavy salted codfish are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs Unites States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain dried heavy salted codfish from Canada, with the exception of that

produced by Granville Gates who has been excluded from this investigation.

These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after January 29, 1985, the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Identification No.	Weighted-average margin (percent)
Canadian Saltfish Corporation	A-122-402-001	20.75%
National Sea Products	A-122-402-002	1.27
United Maritime Fishermen	A-122-402-003	20.75
Sable Fish Packers, Ltd	A-122-402-004	10.95
Sans Souci Seafoods	A-122-402-005	3.40
R.I. Smith	A-122-402-006	1.49
All other manufacturers/producers/exporters.	A-122-402-000	16.30

This determination constitutes an antidumping order with respect to certain dried heavy salted codfish from Canada pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16117 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-007]

Certain Steel Products from South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant and administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on certain steel products from South Africa. The review covers the period from October 1, 1984. The petitioners and the domestic interested party to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Philip Otterness of Al Jemmot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 39379) a countervailing duty order on certain steel products from South Africa.

In letters dated May 8, 1984, and May 2, 1985, United States Steel Corporation, Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel, Inc., National Steel Corporation, and Cyclops Corporation, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. The Department received a similar letter from the other domestic interested party to the proceeding, Bethlehem Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of South African carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, galvanized carbon steel, hot-rolled carbon steel bars, hot-rolled alloy steel bars, and cold-formed carbon steel bars. The products are fully described in the appendix to this notice. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on certain steel products from South Africa provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of certain steel products from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results

of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: June 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

Appendix—Description of Products

For purposes of this review:

1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded or drawn, or cold-formed or cole-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

2. *The term "hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, 607.6625, or 607.9400 of the TSUSA; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc, including any meterial which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross section with a width at least four times the thickness in the "as cast" condition or processed only through primary mill hot rolling are not included.

3. The term *"hot-rolled carbon steel sheet"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a hot-rolled carbon steel product, whether or not corrugated or crimped, whether or not pickled, and whether or not painted or varnished; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 8 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness and over 12 inches in width as currently provided for in items 607.6610, 607.6710 through 607.6740, 607.8320, 607.8342, or 607.9400 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 607.6610 AND 607.8320).*

4. The term *"cold-rolled carbon steel sheet"* covers the following cold-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8350 through 607.8360 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEM 607.8320).*

5. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, or 608.1330 of the TSUSA. *NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.1100).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

6. The term *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross secions in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not, cold-formed, and not coasted or plated with metal, as currently provided for in items 606.8310, 606.8330, or 606.83[illegible] of the TSUSA.

7. The term *"hot-rolled alloy steel bars"* covers hot-rolled alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, as currently provided for in item 606.9700 of the TSUSA.

8. The term *"cold-formed carbon steel bars"* covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, as currently provided for in items 606.8805 or 606.8815 of the TSUSA. Cold-formed carbon steel bars does not include cold-rolled carbon steel products cut to length, of any cross-sectional dimension less than 0.703 inch in maximum cross-sectional dimension, or if of rectangular cross section, not over 0.25 inch in the thickness and not over 0.50 inch in width.

[FR Doc. 85-16116 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; General Pneumatic Products Corp. et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) General Pneumatic Products Corporation, 11460 Dorsett Road, Maryland Heights, Missouri 63043, producer of pneumatic hand tools (June 6, 1985); (2) Riley Creek Lumber Company, P.O. Box 631, Laclede, Idaho 83841, producer of softwood lumber and logs (June 7, 1985); (3) Acraloc Corporation, 113 Flint Road, Oak Ridge, Tennessee 37830, producer of food packaging machinery (June 7, 1985); (4) The Sanibel Company, 1090 East 16th Street, Hialeah, Florida 33010, producer of women's skirts and shirts (June 7, 1985); (5) Elston Electronics Corporation, 35 Lehigh Street, Geneva, New York 14456, producer of video display monitors (June 10, 1985); (6) Jorge Saavedra, Inc., 15421 Electronic Lane, Huntington Beach, California 92649, producer of men's and women's shirts, shorts, jackets, caps, and arm and leg warmers (June 10, 1985); (7) Bennett-Ireland, Inc., 23 State Street, Norwich, New York 13815, producer of fireplace equipment and accessories (June 10, 1985); (8) Great Lakes Industry, Inc., P.O. Box 6219, Jackson, Michigan 49204, producer of components for agricultural and construction equipment (June 11, 1985); (9) Leather Art Manufacturing Company, 18 Marshall Street, South Norwalk, Connecticut 06854, producer of belts, watchbands and small leather goods (June 12, 1985); (10) Batavia Turf Farms, 7939 Bank Street Road, Batavia, New York 14020, producer of onions and

sod (June 13, 1985); (11) Goldberger Doll Manufacturing Company, Inc., 538 Johnson Avenue, Brooklyn, New York 11237, producer of dolls (June 13, 1985); (12) Lumured Corporation, 292 East Smith Street, Woodbridge, New Jersey 07095-0217, producer of handbags (June 14, 1985); (13) Aquino Sailcloth, Inc., P.O. Box 96, City Island, New York 10464, producer of fabric sails (June 14, 1985); (14 Stephen Bond, R.D. #1, Box 36, Hector, New York 14841, producer of grapes (June 19, 1985); (15) Super Doll Corporation, 476 Jefferson Street, Brooklyn, New York 11237, producer of doll components (June 20, 1985); (16) Fulford Manufacturing Company, 107 Stewart Street, Providence, Rhode Island 02901, producer of metal stampings, jewelry findings and other metal products (June 25, 1985); and (17) Sierra Grinding Wheel, Inc., P.O. Box 422, Jackson, Wisconsin 53037, producer of grinding wheels and stones (June 27, 1985).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85-16115 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-DR-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on July 17, 1985, 10:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:30 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982)) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: July 1, 1985.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16119 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-DR

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Hagenbeck Tierpark (P356)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Hagenbeck Tierpark, D-2000 Hamburg 54.

b. Address (Stellingen), West Germany.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphin (*Tursiops truncatus*) 4.

4. Type of Take: Capture for permanent maintenance.

5. Location of Activity: Southeast Texas coast or Mississippi Sound.

6. Period of Activity: Four (4) years.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set.forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Bezirksamt Eimsbuttel Veterinaramt Hamburg have been found appropriate and sufficient to allow consideration of this permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilitites are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammel Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should

set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: July 1, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-16174 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Withdrawal of Application; Cold Spring Harbor Fish Hatchery and Aquarium

On March 8, 1985, notice was published in the **Federal Register** (50 FR 9482) that an application had been filed by the Cold Spring Harbor Fish Hatchery & Aquarium, P.O. Box 535, Route 25A, Cold Spring Harbor, New York 11724 for a permit to take seventy-four (74) shortnose sturgeon (Acipenser brevirostrum) from the Hudson River, New York, from April through June 1985.

Notice is hereby given that on June 20, 1985 that application was withdrawn and the withdrawal request has been acknowledged and accepted without prejudice by the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930-3799.

Dated: July 1, 1985.

Carmen J. Blondin,

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

[FR Doc 85-16172 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Montreal Zoological Park

On April 12, 1985, notice was published in the **Federal Register** (50 FR 14409) that an application had been filed by Montreal Zoological Park, Montreal, Quebec, Canada for a permit to take marine mammals for the purpose of scientific research and/or public display.

Notice is hereby given that on June 27, 1985 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3000 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 1, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-16173 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-22-M

THE COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, July 31, 1985 at 10:00 in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C., July 1, 1985.

Charles H. Atherton,

Secretary.

[FR Doc. 85-16162 Filed 7-5-85; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 128. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 128 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1985.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 128 to the Heads of the Executive Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated August 17, 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 127 except for the cases identified by asterisks (*) which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$19
Anaktuvuk Pass	140
Anchorage	116
Atqasuk	215
Barrow	139
Bethel	138
Coldfoot	122
College	104
Cordova	124
Deadhorse	131
Dillingham	114
Dutch Harbor—Unalaska	105
Eielson AFB	104
Elmendorf	116
Fairbanks	104
Ft. Richardson	116
Ft. Wainwright	104
Juneau	109
Ketchikan	113
Kodiak	129
Kotzebue [2]	123
Murphy Dome [2]	104
Noatak	123
Nome	136
Noorvik	123
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	131
Sand Point	103
Shemya AFB [2]	30
Shungnak	123
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	129
St. Mary's	100
Tanana	136
Valdez	129
Wainwright	165
Wrangell	113
Yakutat	100
All other Localities [2]	90
American Samoa	81
Guam M. I	91
Hawaii:	
Hawaii, Island of	63
Oahu	94
All other Islands	85
Johnston Atoll [3] *	23
Midway Islands [3] *	13
Puerto Rico:	
Bayamon:	
December 16 to May 15	132
May 16 to December 15	99
Carolina:	
December 16 to May 15	
May 16 to December 15	
Fajardo (including Luquillo):	
December 16 to May 15	132
May 16 to December 15	99
Ft. Buchanan (including GSA Service Center, Guaynabo):	
December 16 to May 15	132
May 16 to December 15	99
Ponce (including Ft. Allen NCS)	92
Roosevelt Roads:	
December 16 to May 15	132
May 16 to December 15	99
Sabana Seca:	
December 16 to May 15	132
May 16 to December 15	99
San Juan (Including San Juan Coast Guard Units):	
December 16 to May 15	132
May 16 to December 15	99
All other localities	111
Virgin Islands of U.S.:	
December 12 to April 30	126
May 1 to November 30	93
Wake Island [3]	20
All other Localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meal in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[3] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 1, 1985.

[FR Doc. 85-16044 Filed 7-5-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

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, July 30, 1985.

Times Of meeting: 0800-1700 hours.

Place: Hay Group, Inc., Washington, DC.

Agenda: The Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle—Chair and three subpanel Chairs (Active/U.S. Army Reserve, Army National Guard, and Mobilization Base/Industrial Perspective)—will meet to draft a final report. 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) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-16099 Filed 7-5-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 7, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 2, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Pell Grant Program Student Validation Roster
Agency Form Number: ED 255–4
Frequency: As necessary
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 1,000; Burden Hours: 12,000
Recordkeeping Burden: Recordkeepers: 1,000; Burden Hours: 500

Abstract: The Student Validation Roster is prepared by the Department and sent to participating postsecondary educational institutions to determine the accuracy of the Pell Grant recipient data previously submitted on the Student Aid Report. A school notates corrections on this roster and returns it to the Department for subsequent updating of the Department data which is then processed for end-of-year adjustments to the Pell authorization level at that school.

Office of Educational Research and Improvement

Type of Review Requested: Extension
Title: State-Level Personnel Exchange (Elementary-Secondary)
Agency Form Number: ED 2428–1, 2428–2
Frequency: Quarterly
Affected Public: State or local governments
Reporting Burden: Responses: 40; Burden Hours: 60
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The National Center for Education Statistics (NCES) was mandated by Pub. L. 93–380, as amended, to "assist State and local educational agencies in improving and automating their statistical and data collection activities". As part of its assistance program, NCES has established a State-Level Personnel Exchange to facilitate the interchange of information and expertise among States.

[FR Doc. 85–16157 Filed 7–5–85; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of the following material:

Contract Number WC–EU–276, for the loan of 42 grams of plutonium-242 to the European Transuranium Institute, Karlsruhe, the Federal Republic of Germany, for use in basic energy sciences, including neutron and photoemission. The material will be returned to the United States upon completion of the studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 1, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16132 Filed 7–5–85; 8:45 am]

BILLING CODE 6450–01–M

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangements; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the shipment of 6 kilograms of irradiated fuel from the HMI Reactor in Berlin, West Germany to the USDOE Idaho facilities for processing and storage of recovered uranium under contract number DE–AC09–77SR01014.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 1, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16133 Filed 7–5–85; 8:45 am]

BILLING CODE 6450–01–M

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the:

a. Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community

(EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended;

b. Agreement for Cooperation Between the Government of the United States and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended;

c. Agreement for Cooperation between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy; and,

d. Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of the following sales:

a. (1) Contract Number S-EU-844, to the Societe Centrale de L'Uranium des Minerais et Metaux Radioactif (SCUMRA), France, 51.0 grams of normal uranium (26 grams as solid metal and 25 grams of U_3O_8), for use as standard reference material.

(2) Contract Number S-EU-845, to the Comitato Nazionale Per La Ricerca E Per Lo Sviluppo Dell'Energie Alternative, Italy, 1.0 gram of depleted uranium solid oxide, 3 grams of enriched uranium solid oxide, and 3 grams of enriched uranium nitrate solution, for use as standard reference material.

(3) Contract Number S-EU-846, to the Resident Representative of the United Nations Development Programme, for IAEA project GRE/1/032, Demokritos Research Centre, Greece, 1.3024 grams of normal uranium (pitchblende and monazite ores) and 0.76647 grams of thorium (monzanite ore), for use as standard reference material.

(4) Contact Number S-EU-847, to AERE Harwell, England, 0.02 grams of solid plutonium nitrate, for use as standard reference material.

(5) Contract Number S-EU-848, 250,000 curies of tritium to Amersham International, England, for use in production of labelled compounds for resale and for resale in bulk gaseous form.

(6) Contract Number S-EU-850, to Kraftwerk Union AG, West Germany, 4 grams of uranium as oxide containing U-234 enriched to 99%+, for use in fission ionization detectors for boiling water reactors to compensate the burnup of 235 by the breeding effect.

(7) Contract Number S-EU-851, to Levy Hills Laboratories, Ltd., England, 3,000 grams lithium enriched to 95-96% Li-6 as lithium carbonate, for use in the manufacture of glass scintillators which will be used for the production of neutron detectors in the United States and the United Kingdom.

(8) Contract Number S-EU-852, to Universite de Clermont II, France, one gram of enriched uranium solid U_3O_8 (0.9911%), for use as standard reference material.

(9) Contract Number S-EU-853, to GSI, West Germany, 480 grams of thorium metal, for use in ion source of UNILAC heavy ion accelerator to produce a high energetic beam of thorium ions.

(10) Contract Number WC-EU-278, to Universitaet zu Koeln, West Germany, 99.8 grams of depleted uranium to continue the experimentation begun during Dr. Michael S. Wire's thesis work at Los Alamos National Laboratory.

b. (1) Contract Number S-IA-137, to the Safeguards Analytical Laboratory, International Atomic Energy Agency, Vienna, Austria, approximately 50 grams of uranium, enriched to an average of 25% in U-235, 12.53 grams of plutonium, and 0.49 grams of U-233, for use as standard reference material.

(2) Contract Number S-IA-138, to the Institute of Isotopes of the Hungarian Academy of Sciences, 1.019 grams of normal uranium (pitchblende and monzanite ore) and 0.020 grams of thorium (monzanite orde), for use as standard reference material.

c. Contract Number S-CA-374, to Rio Algom Limited, Canada, 339.165 grams of normal uranium solid oxide, for use as standard reference material.

d. Contract Number S-IE-8, to National Atomic Energy Agency, Indonesia, 0.0197 grams of normal uranium (monzanite ore) and 0.5567 grams of thorium (monzanite ore), for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 1, 1985.

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-16134 Filed 7-5-85; 8:45 am]

BILLING CODE 6450-01-M

Oak Ridge Operating Sites, TN: Trespassing on DOE Property

The Department of Energy (DOE), successor agency to the Atomic Energy Commission, is authorized pursuant to section 229 of the Atomic Energy Act of 1954, as amended; section 104 of the Energy Reorganization Act of 1974 as implemented by 10 CFR Part 860; and section 301 of the Department of Energy Organization Act to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into and upon its nuclear sites. By Notice dated October 19, 1965, appearing at pages 13285-13287 of the **Federal Register** (FR Doc. 65-11108), the Atomic Energy Commission prohibited unauthorized entry into and upon several Oak Ridge operating sites, including the Y-12 Plant Site (p. 13286). This Notice amends the site description of the Y-12 Plant Site to add 2,300 acres to the 534 acres to which unauthorized access was prohibited by the 1965 Notice. Notices stating the pertinent prohibition of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeters as provided in 10 CFR 860.6.

The site description of the Y-12 Plant Site is hereby amended to read as follows:

The DOE installation known as the Y-12 Plant Site, said site being a tract of land primarily in Anderson County, Tennessee, and also being a tract of land primarily in Anderson Country, Tennessee, and also being in the southern part of the City of Oak Ridge, said tract being described more particularly as follows:

Beginning at an iron pin in the southern boundary line of the minimum geographic area limit, said iron pin also being in the southern property line of Lot 3 Block 23CB, City of Oak Ridge and located N. 82°18' W., 56.89 feet from the southeast property corner of Lot 3, Block 23CB, City of Oak Ridge, said southeast property corner also located in the west right-of-way of the South Illinois Wye; thence S. 11°26' E, 487.60 feet to an iron pin west of Scarboro Road; thence continuing west of Scarboro Road S. 11°26' E., 194.24 feet to an iron pin; thence S. 29°23' E., 204.08 feet to an iron pin; thence S. 29°22' E., 36.83 feet to a railroad spike; thence S. 11°30' E., 206.99 feet to a railroad spike; thence S. 08°03' E., 75.73 feet to a railroad spike; thence S. 04°47' E., 441.04 feet to a railroad spike; thence S. 02°35' W., 77.53 feet to an iron pin; thence S. 26°52' W., 72.73 feet to an iron pin; thence S. 47°34' W., 47.01 feet to an iron pin; thence S. 05°52' E., 89.99 feet to an iron pin; thence continuing west of Scarboro Road N. 87°45' E., 52.66 feet to an iron pin; thence S. 18°29' W., 136.08 feet to an iron pin; thence S. 07°52' W., 182.88 feet to an iron pin: thence S. 22°47' E., 427.19 feet to an iron pin in the boundary line of Parcel 300; thence with the boundary line of Parcel 300 S. 36°39' E., 542.83 feet to an iron pin; thence leaving said boundary line and continuing west of Scarboro Road S. 61°13' E., 406.20 feet to an iron pin; thence S. 06°33' W., 63.63 feet to an iron pin; thence S.

70°46′ E., 81.88 feet to an iron pin; thence S. 49°31′ E., 69.78 feet to an iron pin; thence S. 33°36′ E., 125.66 feet to an iron pin; thence S. 30°48′ E., 265.71 feet to an iron pin; thence S. 25°49′ E., 284.16 feet to an iron pin; thence continuing west of Scarboro Road S. 22°45′ E., 250.39 feet to an iron pin; thence S. 20°40′ E., 547.68 feet to an iron pin; thence S. 06°50′ E., 134.63 feet to an iron pin; thence S. 03°36′ W., 398.18 feet to an iron pin; thence leaving the west side of Scarboro Road S. 87°16′ W., 3096.34 feet to an iron pin; thence N. 55°50′ W., 403.13 feet to an iron pin; thence N. 55°35′ W., 349.00 feet to an iron pin; thence N. 02°39′ W., 245.30 feet to an iron pin; thence N. 83°21′ W., 6859.61 feet to an iron pin; thence S. 59°56′ 2872.86 feet to an iron pin; thence S. 26°59′ E., 2296.36 feet to an iron pin; thence S. 14°32′ E., 582.02 feet to an iron pin; thence S. 70°55′ W., 1154.52 feet to an iron pin; thence S. 06°34′ W., 786.66 feet to a railroad spike in the north side of Old Bethel Valley Road; thence with the north side of Old Bethel Valley Road S. 87°22′ W., 479.87 feet to a PK nail; thence S. 86°59′ W., 435.48 feet to a railroad spike; thence S. 87°26′ W., 428.96 feet to a PK nail; thence S. 87°10′ W., 344.06 feet to a railroad spike; thence S. 87°22′ W., 412.59 feet to a PK nail; thence S. 87°13′ W., 392.08 feet to a railroad spike; thence S. 87°19′ W., 434.37 feet to a PK nail; thence S. 87°23′ W., 421.41 feet to a railroad spike; thence S. 87°03′ W., 318.59 feet to a PK nail; thence S. 88°42′ W., 128.75 feet to a railroad spike; thence N. 84°21′ W., 195.52 feet to a PK nail; thence continuing with the north side of Old Bethel Valley Road N. 81°11′ W., 241.32 feet to a PK nail; thence N. 83°43′ W., 183.12 feet to a railroad spike; thence N. 88°45′ W., 394.06 feet to a PK nail; thence N. 88°07′ W., 248.44 feet to a PK nail; thence S. 87°15′ W., 198.87 feet to a railroad spike; thence S. 78°57′ W., 220.70 feet to a PK nail; thence S. 70°09′ W., 182.60 feet to a PK nail; thence S. 67°32′ W., 198.55 feet to a PK nail; thence S. 71°02′ W., 215.67 feet to a PK nail; thence S. 78°50′ W., 186.72 feet to a PK nail; thence S. 89°11′ W., 224.43 feet to a PK nail; thence N. 88°00′ W., 627.21 feet to a railroad spike; thence N. 88°23′ W., 544.89 feet to a PK nail; thence N. 89°41′ W., 188.96 feet to a PK nail; thence continuing with the north side of Old Bethel Valley Road S. 87°06′ W., 181.25 feet to a railroad spike; thence S. 83°56′ 255.84 feet to a PK nail; thence S. 79°13′ W., 182.54 feet to a PK nail; thence S. 77°17′ W., 371.30 feet to an iron pin; thence leaving the north side of Old Bethel Valley Road N. 09°28′ W., 330.80 feet to an iron pin; thence N. 01°55′ W., 600.33 feet to an iron pin; thence N. 72°02′ W., 777.95 feet to an iron pin; thence N. 08°04′ E., 2282.54 feet to an iron pin; thence N. 45°00′ E., 547.40 feet to an iron pin; thence N. 86°19′ E., 1242.58 feet to an iron pin; thence N. 21°07′ W., 943.40 feet to an iron pin; thence N. 36°52′ W., 300.00 feet to an iron pin; thence N. 84°41′ W., 863.71 feet to an iron pin; thence N. 58°24′ W., 305.29 feet to an iron pin; thence N. 18°26′ W., 505.96 feet to an iron pin; thence N. 14°17′ W., 236.66 feet to an iron pin on the south side of Bear Creek Road; thence with the south side of Bear Creek Road S. 79°29′ W., 225.73 feet to an iron pin; thence leaving said south side and crossing to the north side of Bear Creek Road N. 08°36′ W., 45.44 feet to an iron pin; thence leaving the north side of Bear Creek Road N. 04°53′ W., 223.24 feet to an iron pin; thence S. 85°47′ W., 56.99 feet to an iron pin; thence N. 00°36′ W., 898.71 feet to an iron pin south of a power line; thence with the south side of the power line S. 84°49′ W., 547.51 feet to an iron pin; thence crossing the power line N. 25°01′ W., 1897.57 feet to an iron pin; thence N. 90°00′ E., 3500.00 feet to an iron pin; thence S. 15°27′ W., 1367.82 feet to an iron pin on the north side of a power line; thence with the north side of a power line N. 84°56′ E., 4661.93 feet to an iron pin; thence N. 74°46′ E., 3768.39 feet to an iron pin; thence N. 89°39′ E., 2584.62 feet to an iron pin; thence N. 88°15′ E., 868.53 feet to an iron pin; thence leaving the north side of the power line N. 22°11′ E., 156.07 feet to an iron pin; thence N. 12°42′ E., 193.40 feet to an iron pin; thence N. 22°55′ E., 220.78 feet to an iron pin; thence S. 81°16′ E., 343.55 feet to an iron pin; thence S. 08°09′ E., 327.01 feet to an iron pin; thence S. 19°19′ W., 152.45 feet to an iron pin on the north side of a power line; thence with the north side of the power line N. 88°26′ E., 746.74 feet to an iron pin; thence S. 82°51′ E., 3124.59 feet to an iron pin; thence leaving the north side of the power line N. 77°25′ E., 416.30 feet to an iron pin; thence N. 01°17′ E., 346.56 feet to an iron pin; thence N. 44°16′ E., 976.48 feet to the common iron pin property corner for Parcels 462 and 571, said iron pin also being in the southern bondary line of the minimum geographic area limit; thence with the southern boundary line of the minimum geographic area limit S. 89°17′ E., 1596.71 feet to City of Oak Ridge concrete monument No. 417; thence continuing with the south boundarly line of the minimum geographic area limit S. 82°18′ E., 411.71 feet to the point of beginning and containing 2834.09 acres, more or less.

Dated at Washington, D.C., this 18th day of June, 1985.

Don Ofte,

Principal Deputy Assistant Secretary for Defense Programs.

[FR Doc. 85-15806, Filed 7-5-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140063; BH-FRL 2860-7]

Access To Confidential Business Information by CRC Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA will authorize CRC Systems, Inc. for access to information which has been submitted under the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATE: Access to CBI under this contract will occur no sooner than July 18, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances (OTS) has developed and is using several automated systems for processing information submitted to EPA under various sections of TSCA. These systems were developed to support the Test Rules Development Program and the Premanufacture Notice (PMN) review program by providing the capacity to retrieve information about chemical substances similar to those under review. The volume and administration of data in these programs has changed over time, as have EPA's uses for automated support systems. Under contract no. 68-01-6890, CRC Systems, Inc. (CRC) of 4020 Williamsburg Court, Fairfax, VA 22032, will evaluate that new OTS program needs and will develop detailed systems designs to meet those needs. CRC will also study computer hardware currently in use and make recommendations on upgrading equipment for more efficient processing. The work to be performed under this contract is a continuation of the work performed under contract No. 68-01-6746, previously announced in the **Federal Register** of November 17, 1983 (48 FR 52357).

Some submitters of TSCA information contained in the computer systems to be analyzed by CRC have claimed their submissions, or portions thereof, to be confidential. In the course of performing the above-mentioned contract functions, CRC personnel will need to review computer printouts and computer screens which may contain information from such submissions. Therefore, in accordance with 40 CFR 2.306(j), EPA has determined that CRC personnel will require access to CBI submitted under TSCA in order to perform work successfully under this contract.

EPA is issuing this notice to inform all submitters of information under TSCA that it will authorize CRC personnel, on a need-to-know basis, for access to TSCA CBI submitted under these sections of the Act. Such access will be permitted only to the extent necessary to evaluate the computer systems under review. CRC employees so authorized will have access to TSCA CBI only on EPA premises. Authorized contractor personnel will be briefed on appropriate security procedures and will be required to sign non-disclosure agreements before being given access to TSCA CBI.

CRC has been authorized for access to TSCA CBI under the "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. CRC's CBI access authorization under this contract is scheduled to expire on September 30, 1987.

Dated: July 1, 1985.

E.F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-16147 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51578; TSH-FRL 2860-6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1104, 85-1105, 85-1106, 85-1107, 85-1108, 85-1109 and 85-1110—September 18, 1985.

P 85-1111 and 85-1112—September 21, 1985.

P 85-1113, 85-1114, 85-1115, 85-1116, 85-1117, 85-1118, 85-1119, 85-1120, 85-1121, 85-1122, 85-1123, 85-1124, 85-1125, 85-1126, 85-1127, 85-1128, 85-1129, 85-1130, 85-1131, and 85-1132—September 22, 1985.

P 85-1133, 85-1134, 85-1135 and 85-1136—September 23, 1985.

Written comments by:

P 85-1104, 85-1105, 85-1106, 85-1107, 85-1108, 85-1109 and 85-1110—August 19, 1985.

P 85-1111 and 85-1112—August 22, 1985.

P 85-1113, 85-1114, 85-1115, 85-1116, 85-1117, 85-1118, 85-1119, 85-1120, 85-1121, 85-1122, 85-1123, 85-1124, 85-1125, 85-1126, 85-1127, 85-1128, 85-1129, 85-1130, 85-1131, and 85-1132—August 23, 1985.

P 85-1133, 85-1134, 85-1135 and 85-1136—August 24, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51578]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1104

Manufacturer. Rohm and Haas Company.

Chemical. (G) Ammonium Polyacrylate/methacrylate acid esters.

Use/Production. (S) Rheology modifier for intermediate leather coatings. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1105

Manufacturer. Rohm and Haas Company.

Chemical. Substituted ammonium polyacrylate/methacrylate acid esters.

Use/Production. (S) Rheology modifier for intermediate leather coatings. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1106

Importer. Confidential.

Chemical. (G) Alkenyl acetate.

Use/Import. (G) Ingredients for use in consumer products; highly dispersive use. Import range: 100-1,000 kg/yr.

Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic; Photoallergy test: No evidence of photoallergy; Repeated insult patch test: No evidence of irritation and sensitization.

Exposure. Use: dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential.

P 85-1107

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public file.

Use/Production. (G) A component of formulations for open, non-dispersive use. Prod. range: 500-4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Less than or equal to 2.05 kg released to land. Disposal by landfill.

P 85-1108

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polystyrylpyridine resin.

Use/Production. (S) Industrial matrix resin for graphite or glass laminates used in fire blocking applications and kevlar composites use for structural and non-structural applications. Prod. range: Confidential.

Toxicity Data. Acute oral: > 1,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Essentially no irritation.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1109

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polystyrylpyridine resin.

Use/Production. (S) Industrial matrix resin for graphite or glass laminates used in fire blocking applications and kevlar composites used for structural and non-structural applications. Prod. range: Confidential.

Toxicity Data. Acute oral: > 1,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Essentially no irritation.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1110

Manufacturer. Eastman Kodak Company.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Contained use in an article. Prod. range: 2 kg/yr

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 7 workers, up to 0.4 hr/day, up to 5 da/yr.

Environmental Release/Disposal. Less than 0.03 kg/batch released to water. Less than 0.03 kg/batch

biological treatment with less than 1 kg/batch incinerated and navigable waterway.

P 85-1111

Importer. Sumitomo Corporation of America.
Chemical. (S) Phenyl tribromomethyl sulfone.
Use/Import. (G) Additive to increase photo-sensibility. Import range: Confidential.
Toxicity Data. Acute oral: 4.855 g/kg.
Exposure. Processing and use: dermal, a total of 4 workers, up to 1 hr/da, up to 70 da/yr.
Environmental Release/Disposal. No release. Disposal by anti-pollution system.

P 85-1112

Manufacturer. Confidential.
Chemical. (G) Further clarification needed before information can be released to public file.
Use/Production. (G) Polyacrylate for use in adhesive emulsions. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85-1113

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1114

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1115

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1116

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1117

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Base used for reaction to form epoxy polyester. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1118

Manufacturer. Confidential.
Chemical. (G) Epoxy polyester.
Use/Production. (S) Epoxy polyester converted to paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1119

Importer. Marubeni American Corporation.
Chemical. (G) High molecular weight linear saturated polyester.
Use/Import. (S) Modifier for thermosetting resins and adhesives for film lamination. Import range: 300,000-120,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-1120

Importer. Marubeni American Corporation.
Chemical. (G) High molecular weight linear saturated polester.
Use/Import. (S) Coating for metal sheet. Import range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-1121

Importer. Marubeni American Corporation.
Chemical. (G) High molecular weight linear saturated polester.
Use/Import. (S) Hot melt adhesive powder for thermofusible interlining. Import range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-1122

Manufacturer. Products Research and Chemical Corporation.
Chemical. (S) Polymer of ethanol, 2,2'-thiobis, ethanol, 2-mercapto, oxirane, methyl and phenol, 4,4'-thiobis.
Use/Production. (S) Industrial thermosetting polymer in sealants adhesives and coatings and a site-limited intermediate for plasticizer in rubber and sealant compositions. Prod. range: 500,000-1,800,000 kg/yr.
Toxicity Data. Acute oral: > 5 g/kg; Irritation: Skin—Not a primary irritant, Eye—Non-irritant/non corrosive.
Exposure. Manufacture and processing: dermal, a total of 62 workers, up to 2.0 hr/da, up to 100 da/yr.
Environmental Release/Disposal. 0.5 to 5 kg/batch released to land. Disposal by landfill.

P 85-1123

Manufacturer. Confidential.
Chemical. (S) Humic acids, magnesium salts.
Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water, land.

P 85-1124

Manufacturer. Confidential.
Chemical. (S) Humic acids, magnesium chloride complex.
Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water, land.

P 85-1125

Manufacturer. Confidential.
Chemical. (S) Humic acids, magnesium sulfate complex.
Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water, land.

P 85-1126

Manufacturer. Confidential.
Chemical. (S) Humic acids, manganese salts.

Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water, land.

P 85-1127

Manufacturer. Confidential.

Chemical. (S) Humic acids, manganese chloride complex.

Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted

Exposure. Manufacture: dermal and inhalation, a total 3 workers.

Environmental Release/Disposal. No release to air, water, land.

P 85-1128

Manufacturer. Confidential.

Chemical. (S) Humic acids, manganese sulfate, complex.

Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water, land.

P 85-1129

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Polyurethane and castable urethane resin for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1130

Manufacturer. Confidential.

Chemical. (G) Acrylate-substituted phenoxy resin.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1131

Manufacturer. Confidential.

Chemical. (G) Acrylate-substituted vinylchloride copolymer resin.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1132

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 4 workers, up to 1 hr/da, up to 12 da/yr.

Environmental Release/Disposal. 1 to 10 kg/batch released to land.

P 85-1133

Manufacturer. Confidential.

Chemical. (S) Polymer of: Propylene glycol, isophthalic acid, adipic acid and 12-hydroxystearic acid.

Use/Production. (S) Commercial protective coatings, Prod. range: 150,000 lb/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 lbs/batch released to land. Disposal by landfill.

P 85-1134

Manufacturer. National Starch and Chemial Corporation.

Chemical. (G) Polyvinylacetate copolymer.

Use/Production. (S) Pinder for nonwovens. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-1135

Importer. Confidential.

Chemical. (G) Alkyl phenol blocked isocyanate, prepolymer.

Use/Import. (S) Industrial and commercial plasticizing additive for 2-component epoxy coatings. Import range: 10,000-30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 20 workers, 4 industrial sites.

Environmental Release/Disposal. No release.

P 85-1136

Importer. Confidential.

Chemical. (G) Ketoxime blocked urethane polymer of an aromatic diisocyanate, alkane polyols, alkanedioic acid.

Use/Import. (S) Coating to impart leather like appearance. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: inhalation.

Environmental Release/Disposal. No data submitted.

Dated: July 1, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-16143 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59199 BH-FRL 2860.4]

Certain Chemicals Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemptions.

DATE: Written comments by: July 23, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59199]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-54

Close of Review Period. August 7, 1985.

Manufacturer. Confidential.

Chemical. (G) Substituted phenoxy alkyl acid ester.

Use/Production. (G) Destructive use intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 15 workers, up to 1 hr/da.

Environmental Release/Disposal. Release to water with 0.2 to 0.4 kg to process and product samples. Disposal by publicly owned treatment works (POTW), RCRA incineration or approved landfill.

T 85-55

Close of Review Period. August 8, 1985.

Manufacture. Confidential.

Chemical. (G) Amino modified aromatic polyether.

Use/Production. (G) Performance additive for an industrial coating. Prod. range: 1,050 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 13 da/yr.

Environmental Release/Disposal. 0.3 to 15 kg/batch released to land. Disposal by incineration and landfill.

T 85-56

Close of Review Period. August 10, 1985.

Manufacture. Confidential

Chemical. (S) Humic acids, chromium (3+) salts.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture: dermal, and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water and land.

Dated: July 1, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-16145 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59721; TSH-FRL 2860-5]

Dimethyl Terephthalate, Alkane Diols and Trimellitic Anhydride Polymer Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATE: Close of Review Period: Y 85-99, July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-99

Manufacturer. The Goodyear Tire & Rubber Company.

Chemical. (G) Dimethyl terephthalate, alkane diols and trimellitic anhydride polymer.

Use/Production. (S) Industrial polyester for coating applications. Prod. range: 100,000-2,000,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: inhalation, a total of 3 workers, up to 6 hrs/da, up to 150 da/yr.

Environmental Release/Disposal. 213 to 299 kg/batch released to air with trace to non-detectable to water. Disposal by on-site lagoon system, incineration and industrial landfill.

Dated: July 1, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-16144 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00208; PH-FRI 2860-8]

Open Meeting of the EPA SFIREG Applicator Certification and Training Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA State FIFRA Issues Research and Evaluation Group (SFIREG) Applicator Certification and Training Task Force will hold a public meeting.

DATE: Wednesday, July 17, 1985, beginning at 8:30 a.m. and ending approximately at 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 17, Washington Information Center, 401 M St., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Betty L. Winter, Office of Pesticides and Toxic Substances (TS-788), Environmental Protection Agency, Rm. E-639A, 401 M St., SW., Washington, D.C. 20460, (202-382-2916).

SUPPLEMENTARY INFORMATION: The discussion topic for this meeting will be recommendations for improving current applicator certification and training programs and the restricted use classification.

Dated: June 28, 1985

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-16146 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Citizens Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

company engaged in a nonbanking activity that is listed in 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 office 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 26, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Citizens Financial Group, Inc.*, Providence, Rhode Island; to acquire Delmar Financial Company, and Delmar Insurance and Management Company, both located in Clayton, Missouri, thereby engaging in making, acquiring and servicing residential and commercial mortgage loans; and acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Huntley Bancshares, Inc.*, Huntley, Illinois; to acquire Roberts Insurance and Tax Service, Huntley, Illinois, thereby engaging in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act. These activities would be performed within a ten mile radius of the Village of Huntley, McHenry County, Illinois.

Board of Governors of the Federal Reserve System, July 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16111 Filed 7-5-85; 8:45 am]

BILLING CODE 6210-01-M

Jefferson Holding Corp. et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 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)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) 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.

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 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.

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 July 25, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Jefferson Holding Corp.*, Chicago, Illinois; to engage *de novo* directly in commercial and non-residential mortgage lending activites. These activities would be performed in the city of Chicago and its surrounding metropolitan area.

B. Federal Reserve Bank of San Francisco (Harry W. Green Vice President) 101 Market Street, San Francisco, California 94105:

1. *Area Financial Corporation*, Redwood City, California; to engage *de novo* directly in acting as agent with respect to insurance limited to to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, July 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16112 Filed 7-5-85; 8:45 am]

BILLING CODE 6210-01-M

Verbanc Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Verbanc Financial Corp.*, Bellows Falls, Vermont; to become a bank

holding company by acquiring 100 percent of the voting shares of Bellows Falls Trust Company, Bellows Falls, Vermont.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation*, Jersey City, New Jersey; to acquire an additional 36.3 percent of the voting shares of The Broad Street National Bank of Trenton, Trenton, New Jersey.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta Georgia 30303:

1. *Commerce Corporation*, St. Francisville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Feliciana Commerce Corporation, St. Francisville, Louisiana, thereby indirectly acquiring Bank of Commerce & Trust Company, St. Francisville, Louisiana.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Bancorp, Inc.*, Salem, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Salem, Salem, Indiana.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Stockmen's Bancorp*, Kingman, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Stockmen's Bank, Kingman, Arizona.

Board of Governors of the Federal Reserve System, July 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 16113 Filed 7-5-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control Cooperative Agreements; Preventive Health Services; Acquired Immunodeficiency Syndrome (AIDS) Surveillance and Associated Epidemiologic Investigations; Availability of Funds for Fiscal Year 1985

Correction

In FR Doc. 85-14714, beginning on page 25325, in the issue of Tuesday, June 18, 1985, make the following corrections:

1. On page 25325, in the third column, in the second line of the paragraph under the heading *"B. Cooperative Activities"*, "CDE" should read "CDC".

2. On page 25326, in the first column, in the eleventh line, "a project" should read "each budget".

BILLING CODE 1505-01-M

Food and Drug Administration

[Docket No. 84N-0241]

Availability of Second Draft of National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a second draft of the updated version of the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas. FDA is distributing this draft to State shellfish control officials, shellfish industry members, and other interested persons associated with the Interstate Shellfish Sanitation Conference (ISSC). The agency will provide the draft to other interested persons for review and comment upon request.

DATE: Comments by August 7, 1985.

ADDRESSES: The second draft, entitled "National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas," is available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the second draft are available from, and written comments should be sent to, the Center for Food Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF-344), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-485-0149. Requests should identify the document as "Second Draft, National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas."

FOR FURTHER INFORMATION CONTACT: J. David Clem, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary program involving State shellfish control agencies, the shellfish industry, and FDA. Through international bilateral agreements, seven foreign countries also participate in the NSSP.

The NSSP is concerned with the sanitary control of fresh and fresh frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical control, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a three part manual of operations. The last NSSP Manual of Operations was published in 1965.

In 1982 interested State officials and members of the shellfish industry formed the ISSC. The purpose of the ISSC is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for shellfish controls that will assure sources of safe and sanitary shellfish. The ISSC establishes procedures for the uniform application of those guidelines.

FDA and the ISSC entered into a memorandum of understanding in March 1984 (see 49 FR 12751; March 30, 1984). This agreement provides, among other things, that FDA will publish revisions to the NSSP Manual of Operations. In this context, the second draft of the NSSP Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, is being provided to the ISSC for review and comment. FDA will also welcome comments from any interested person.

A working draft was reviewed and discussed at the ISSC second annual meeting held in Orlando, Florida, August 14 to 16, 1984. FDA announced the availability of this working draft and distributed copies to interested persons before that meeting (see 49 FR 31774; August 8, 1984). FDA provided additional information about its efforts to revise the NSSP Manual of Operations in the **Federal Register** of February 26, 1985 (50 FR 7797).

The ISSC has scheduled its third annual meeting for August 12 to 15, 1985, in Cherry Hill, New Jersey. The second draft likely will be one of the topics discussed at the meeting. Those persons interested in obtaining more information about this meeting should contact Mr. Richard Thompson, Chairman, Interstate Shellfish Sanitation Conference, 2902 Dillionhill Dr., Austin, TX 78745, phone c/o Texas Department of Health, 512-458-7510.

Dated: July 3, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16241 Filed 7-3-85; 1:23 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds To Provide Technical and Nonfinancial Assistance

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) has determined that up to a total of $3 million in funds under section 330(f)(1) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(f)(1), are available under the Department's Fiscal Year 1985 appropriation, Pub. L. 98-619, for funding grants to entities for the provision of certain technical and nonfinancial assistance to community health centers (CHCs).

DATE: To receive consideration, applications for grants to provide such assistance to CHCs must be received by the close of business on July 25, 1985 in the appropriate regional office (see Appendix for listing of regional offices).

FOR FURTHER INFORMATION CONTACT: Application information may be obtained from, an applications should be mailed to, the appropriate Regional Health Administrator (see Appendix).

SUPPLEMENTARY INFORMATION: HRSA has determined that up to a total of approximately $3 million is available under section 330(f)(1) of the PHS Act for the award of grants to entities, including State and regional primary care associations, to enable them to provide certain technical and nonfinancial assistance to CHCs, as described below.

Section 330(f)(1) provides as follows:

"The Secretary may provide (either through the Department of Health and Human Services or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a community health center, and in meeting requiremnts of subsection (e)(2)."

The HRSA has decided to make these funds available under this notice in order to provide assistance to CHCs in the following areas: (1) The initiation of new shared services activities involving specific CHCs within a State or region; and (2) the enhancement of the clinical capability of centers within a State or region.

Shared services activities may include, but are not limited to, assistance to CHCs in developing or sharing managment information systems, cost accounting systems, marketing, and joint or bulk purchasing. Activities involved in developing shared services for CHCs could include mailing or pertinent materials, establishing meetings and workshops, and providing on-site assistance. Clinical activities could involve, but are not limited to, training and orientation for health center medical directors, continuing medical education, and participation in perinatal initiatives.

Evaluation of the applications will be based on: (1) Demonstration of the capability an experience of the organization in carrying out similar or related activities; (2) demonstration of the need and value of the specific shared services activities to identified community health centers; (3) the extent to which the applicant has the support of and/or experience working with the CHCs to which it is seeking to provide assistance; (4) demonstration of the applicant's capability to address clinical issues and to interact with medical directors of CHCs; (5) knowledge and awareness of specific State and local issues affecting CHCs; and (6) the ability of the applicant to carry out its grant proposal effectively and in a cost-efficient manner.

In determining which grants to approve and the amount of the awards, HRSA intends to take into account the extent to which such grants will provide for an appropriate distribution of resources throughout the country. Grants awarded under the Notice will be subject to the requirements of the Departmental Grants Administration Regulations at 45 CFR Part 74.

The applications are subject to the provision of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by regional offices will contain a listing of States which have chosen to set up such a review system and will provide the points of contact in such a review system and will provide the points of contact in such States for that review. Applicants are encouraged to contact such States as soon as possible in the application process to discuss their plans and to submit their applications to such States as soon as possible so that the State review can be performed in a timely manner. By regulation, interested States are allowed 60 days for review of competing applications and 30 days for non-competing applications. At the latest, States should receive applications at the same time they are due in the regional office.

Catalog of Federal Domestic Assistance Number 13.224.

Dated: July 2, 1985.

John H. Kelso,

Acting Administrator.

Appendix

Regional Health Administrators.

Edward J. Montminy, Regional Health Administrator, PHS—Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203. (617) 223-6827.

Vivian Chang, M.D., Regional Health Administrator, PHS—Region II, 26 Federal Plaza building, New York, New York 10007. (212) 264-2560.

William Lassek, M.D., Regional Health Administrator, PHS—Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101. (215) 596-6637.

George A. Reich, M.D., M.P.H., Regional Health Administrator, PHS—Region IV, 101 Marietta Tower, Atlanta, Georgia 30323. (404) 221-2316.

E. Frank Ellis, M.D., Regional Health Administrator, PHS—Region V, 300 S. Wacker Drive, Chicago, Illinois 60606. (312) 353-1385.

Sam Bell, Regional Health Administrator, PHS—Region VI, 1200 Main Tower Building, Dallas, Texas 75202. (214) 767-3879.

Youn Bock Rhee, Regional Health Administrator, PHS—Region VII, 601 East 12th Street, Kansas City, Missouri 64106. (816) 374-3291.

Audrey Nora, M., Regional Health Administrator, PHS—Region VIII, 1961 Stout Street, Denver, Colorado 80294. (303) 844-6163.

Sheridan L. Weinsten, M.D., Regional Health Administrator, PHS—Region IX, 50 United Nations Pl., San Francisco, California 94102. (415) 556-5810.

Dorothy H. Mann, Regional Health Administrator, PHS—Region X, 2901 Third Avenue, Seattle, Washington 98121. (206) 442-0430.

[FR Doc. 85-16256 Filed 7-5-85 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and certain of its subcommittees on July 9, 1985, 8:30 a.m. to adjournment, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will posted in the hotel lobby.

Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. Raymond Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616, Bethesda, Maryland 20205, (301) 496–6045. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496–6917.

Dated: June 24, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–16100 Filed 7–5–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a public briefing meeting to be sponsored by the National Heart, Lung, and Blood Advisory Council, National Institutes of Health, September 30, 1985, at the Los Angeles Airport Marriot Hotel, 5855 West Century Boulevard, Los Angeles, California 90045.

The meeting will be open to the public from 9:00 a.m. to adjournment for the purpose of informing biomedical scientists, administrators, volunteer health organizations, and the public about the status of the National Heart, Lung, and Blood Institute and about possible strategies for achieving and maintaining a balance of program mechanisms and for protecting the number of reserach grants awarded by the Institute. This briefing meeting is designed as an educational effort that will also provide the opportunity for the Council and the National Heart, Lung, and Blood Institute to hear directly from those interested in and concerned about the future of the Institute's extramural programs.

Those who wish to speak at this briefing meeting must submit a written request to Dr. Jay Moskowitz, address given at the end of this notice, no later than September 3, 1985. The request to speak must include the following:

(1) The name of the person who wishes to address the Council; (2) the professional affiliation of the requesting speaker, if appropriate; (3) a brief summary of the statement that would be presented; and (4) the address and telephone number where the requesting speaker can be reached during business hours.

Speakers will be selected from the constituencies who look to the Institute to advance knowledge about heart, lung, and blood diseases and from others whose interests correspond to the extramural programs of the National Heart, Lung, and Blood Institute.

Each speaker will be allowed about ten minutes. Additional written comments of any length may be submitted, at any time, for distribution to the Council. The results of this meeting, including the texts of the speakers and all other materials submitted, will be available in the winter of 1985.

Further information concerning the meeting and the results of this briefing meeting can be obtained from:

Dr. Jay Moskowitz
Public Briefing Meeting
National Heart, Lung, and Blood Advisory Council
National Heart, Lung, and Blood Institute
Building 31, Room 5A–03
Bethesda, Maryland 20205 (301/496–7548)

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 24, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–16101 Filed 7–5–85; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 8-Hydroxyquinoline

The HHS' National Toxicology Program today announces the availability of the technical report describing toxicology and carcinogenesis studies of 8-hydroxyquinoline, a white to off-white crystal or crystalline powder used as an analytical reagent and an antimicrobial agent in medicine, fungicides, and insecticides, as a preservative in cosmetics and tobacco, a chemical intermediate in dye synthesis, and a precipitating reagent in nuclear power plant liquid waste effluent.

Carcinogenesis studies of 8-hydroxyquinoline (99% pure) were conducted by administering the chemical in feed to groups of 50 male and 50 female F344/N rats and B6C3F1 mice at concentrations of 0, 1,500, or 3,000 ppm for 103 weeks. These concentrations were selected because the chemical at higher concentrations resulted in reduced feed consumption, decreases in mean body weights, and deaths in the 15-day and 13-week studies. The average daily doses were estimated to be 73 and 143 mg/kg for male rats, 89 and 166 mg/kg for female rats, 217 and 396 mg/kg for male mice, and 349 and 619 mg/kg for female mice.

Under the conditions of these dietary studies, there was *no evidence of carinogenicity* for male and femal F344/N rats or for male and female B6C3F1 mice given 8-hydroxyquinoline for two years at the concentrations specified above.

Copies of *Toxicology and Carcinogenesis Studies of 8-Hydroxyquinoline in F344/N Rats and B6C3F1 Mice (Feed Studies) (T.R. 276)* are available without charge from the NTP Public Information Office, M.D. B2–04, P.O. Box 12233, Research Triangle Park, NC, 27709. Telephone: (919) 541–3991. FTS: 629–3991.

Dated: July 1, 1985.

David P. Rall,

Director.

[FR Doc. 85–16102 Filed 7–5–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Cancellation of Sale and Termination of Segregation

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Sale and Termination of Segregation.

SUMMARY: The Bureau of Land Management published a Notice of Realty Action, CA 15731, in vol. 49, No. 121, pages 25529–30 of the **Federal Register** on June 21, 1984. This action terminates the segregative effect created by the aforementioned Notice of Realty Action and cancels the sale of public lands. Effective at 10:00 a.m. on July 10, 1985 the segregative effect imposed by Notice of Realty Action CA 15731 will be lifted from the following described land:

San Bernardino Meridian

CA 15369 T. 11 S., R. 2 N., SBM Sec. 25, Lots 1 thru 16 inclusive;
CA 15370 T. 1 S., R. 2 W., SBM Sec. 26, W½NE¼, E½NW¼;
CA 15371 T. 11 S., R. 2 W., SBM Sec. 22, NE¼SE¼;
CA 15372 T. 11 S., R. 2 W., SBM Sec. 23, NW¼SE¼;
CA 15373A T. 12 S., R. 1 W., SBM Sec. 4, SW¼, NW¼SE¼;
CA 15374 T. 13 S., R. 1 W., SBM Sec. 21, Lots 9, 16, 17, 24, 25;
CA 15375 T. 13 S., R. 1 W., SBM Sec. 21, Lots 27 thru 32 inclusive;
CA 15379 T. 14 S., R. 1 E., SBM Sec. 8, NE¼SW¼;
CA 15381 T. 10 S., R. 1 W., SBM Sec. 5, Lot 1;
CA 15382 T. 13 S., R. 1 W., SBM Sec. 22, W½SW¼NW¼SE¼, W½NW¼SW¼SE¼, S½SW¼SE¼;
CA 15384 T. 10 S., R. 3 W., SBM Sec. 33, NW¼NW¼;
CA 15385 T. 13 S., R. 1 W., SBM Sec. 20, W½SW¼SE¼;
CA 15386 T. 8 S., R. 2 E., SBM Sec. 14, NW¼NW¼.

Dated: July 1, 1985.

Wes Chambers,

Acting District Manager.

[FR Doc. 85–16122 Filed 7–5–85; 8:45 am]

BILLING CODE 4310-40-M

Sale of Public Lands in San Diego County, CA; Modification

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Withdrawal of Sale Parcels from Public Sale, Notice of Realty Action, CA 16395.

SUMMARY: This document modifies the legal description of public lands offered for sale in the June 5, 1985 publication of the **Federal Register**, Vol. 50, No. 106, Page 23771. This action withdraws the public lands, described below, from competitive sale:

County/ parcel No.	Serial No.	Legal description	Acres/ ac.±
SD-37	CA17250	T.12 S., R.1 W., SBM; Sec. 4: SW¼NW¼SE¼	200.00 ac.±
SD-45	CA17258	T.11 S., R.2 W., SBM; Sec. 22: NE¼SE¼	40.00 ac.±
SD-46	CA17259	Sec. 25: Lots 1–16	71.20 ac.±
SD-57	CA17270	T13 S., R.1 E., SBM; Sec. 1: NE¼SE¼, S½SE¼, Sec. 12: NE¼ T.13 S., R.2 E., SBM; Sec. 7: Lots 1 & 2	360.69 ac.±
SD-61	CA17274	T.14 S., R.2 E., SBM; Sec. 5: Lots 2–6, S½NW¼	170.92 ac.±

BACKGROUND INFORMATION: The public lands described in this document are being withdrawn from competitive sale as a result of Bureau-benefitting land exchange proposals involving the Santa Fe Southern Pacific Company and BLM and the 3250 Corporation and BLM. The purpose of these proposed exchanges will be to consolidate public land holdings and improve resource management for the areas affected.

The publication of this Notice in the **Federal Register** shall segregate the public lands described herein from all other forms of appropriation and entry under the public land laws and the mining laws for a period of two years. The exchanges are expected to be consummated before the end of that period.

FOR ADDITIONAL INFORMATION: The Bureau of Land Management, Southern California Metropolitan Project, 1695 Spruce Street, Riverside, California 92507.

The publication date of this Notice will commence the 45 day comment period. For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this Realty Action and issue a Final Determination. In the absence of any action by the State Director, this Realty Action will become the Final Determination of the Department of the Interior.

Dated: July 1, 1985

Wes Chambers,

Acting District Manager.

[FR Doc. 85–15858 Filed 7–5–85; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[Docket No. 39994]

Petition of United States Steel Corporation Pursuant to 49 U.S.C. 10505, for Exemption From Tariff Charges and for an Order Requiring Payment of Reparations Contingent Upon an Adverse Ruling in Docket No. 39879

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption and refund request.

SUMMARY: Petitioner, United States Steel Corporation (USS), requests the Interstate Commerce Commission if it rules adversely to USS in Docket No. 39879, United States of America—Petition for Declaratory Order: (1) to grant an exemption to USS from the tariff charges which would then be applicable to the lake cargo coal movements to its Duluth Works from August 8, 1969 to May 31, 1979, and (2) to authorized and order Chesapeake and Ohio Railway Company; Penn Central Transportation Company and Consolidated Rail Corporation; and Norfolk & Western Railway Company, which have not paid refund claims assertedly filed by USS for certain 1974–1979 lake cargo coal movements to the Duluth Works, to pay such claims.

DATES: The exemption and refund request is consolidated for decision with Docket No. 39879 pursuant to the oral hearing order of Administrative Law Judge Paul S. Cross on June 18, 1985. The proceeding in Docket No. 39879 is subject to a November 5, 1985, date for the closing of the evidentiary record. Persons seeking leave to particpate as parties in the exemption and refund proceeding (Docket No. 39994) should file their initial, comments not later than August 2, 1985.

ADDRESS: Send pleadings referring to Docket No. 39994 to: (1) Case Control branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative; Wayne Emery, 600 Grant Street, Room 1501, Pittsburgh, PA 15230.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275–7429.

SUPPLEMENTARY INFORMATION: Additional information is contained in the petition which is available for inspection at the Washington, DC offices of the Interstate Commerce Commission.

By the Commission, Paul S. Cross, Administrative Law Judge.

James H. Bayne,

Secretary.

[FR Doc. 85-16192 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 320 (Sub-3)]

Product and Geographic Competition; Notice of Oral Argument on Proposed Change in Guidelines

AGENCY: Interstate Commerce Commission.

ACTION: Proposed change in guidelines; Notice of Oral Argument.

SUMMARY: The Commission is considering a proposal to supplement its evidentiary guidelines for examining product and geographic competition in market dominance determinations [50 FR 13090, April 2, 1985]. The proposal, which resulted from an agreement between the Association of American Railroads (AAR), the American Paper Institute (API), and the National Industrial Transportation League (NITL), would: (1) Place the burden of proving the existence of effective geographic or product competition on the railroads in all cases; (2) establish that the showing of geographic or product competition with respect to a receiver would not, standing alone, establish the existence of such competition with respect to a producer and vice versa; and (3) make certain changes in the wording of current guidelines 3 and 6, consolidate current guidelines 4, 5, and 8, delete current guideline 9, and revise guideline 10 to encompass only long-term contracts made before October 1, 1980.

DATES: Oral argument will be held at 2:00 p.m. on July 18, 1985. Parties wishing to participate should contact the appropriate coordinator by July 10, 1985. On July 12, 1985, the coordinators will provide to the Office of the Secretary an ordered list of persons that will participate in the oral argument. The Commission will issue a schedule of appearances.

ADDRESSES: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Avenue, NW., Washington, D.C.

If you desire to participate:

(i) In support of the proposal, please contact: R. Eden Martin, 1722 Eye Street, NW., Washington, D.C. 20036, (202) 429-4000.

(ii) In opposition to the proposal, please contact: William L. Slover, 1224 17th Street, NW., Washington, D.C. 20036, (202) 347-7170.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The proposal under consideration was an outgrowth of discussions between railroads and shipper/receivers in a subconference of Ex Parte No. 456, *The Staggers Act of 1980—Conference of Interested Parties.* The proposal initially was suggested to the Commission in a petition filed by AAR and was also supported by API and NITL. The proposal to supplement the Commission's evidentiary guidelines for examining product and geographic competition was described in a decision served April 1, 1985. Approximately 39 parties have filed comments. Due to the extensive and diverse nature of the comments received and the significance of this proceeding, parties will be given an opportunity to augment their written comments. In holding this oral argument, the Commission is seeking further clarification and explanation of the issues raised in the written comments.

The oral argument is scheduled for one hour and twenty minutes. The first forty minutes will be devoted to argument in favor of the AAR/NITL/API agreement that forms the basis of the Commission's proposal. This time will be coordinated by R. Eden Martin, 1722 Eye Street, NW., Washington, DC 20006, (202) 429-4000. No participant will be allotted less than 10 minutes. The second forty minutes will be devoted to argument in opposition to the AAR/NITL/API agreement. This time will be coordinated by William L. Slover, 1224 17th Street, NW., Washington, DC 20036, (202) 347-7170. Again, no participant will be allotted less than 10 minutes.

It is recognized that not all of the parties who filed comments and replies will be able to participate in the oral argument. However, through consolidation of positions via a single spokesperson, all parties should be able to present their views to the Commission. At the time of argument, participants may supplement their oral presentations with written remarks.

This notice is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: June 28, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-16191 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-259)]

Burlington Northern Railroad Co.; Abandonment in Ashland, Bayfield and Douglas Counties, WI; Notice of Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 61.75-mile rail line between Ashland, WI (milepost 0.0) and Allouez, WI (milepost 61.75) in Ashland, Bayfield, and Douglas Counties, WI. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85-16189 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30672]

Exemption; Missouri-Kansas-Texas Railroad Co.—Trackage Rights—Burlington Northern Railroad Co.

Burlington Northern Railroad Company has agreed to continue to grant overhead trackage rights to Missouri-Kansas-Texas Railroad Company between Paola, KS, and Kansas City, MO, a distance of approximately 43 miles. The trackage rights renewal will be effective on June 15, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 19, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-16194 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30686]

Missouri Pacific Railroad Co.—Trackage Rights Exemption—Consolidated Rail Corp.

Missouri Pacific Railroad Company has entered into an agreement for overhead trackage rights over Consolidated Rail Corporation track between East St. Elmo, IL, milepost 154.1 and St. Elmo, IL, milepost 157.5 a distance of 3.4 miles. The trackage rights agreement will be effective on June 25, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 26, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-16193 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30664]

Colorado and Eastern Railroad Co.; Purchase (Portion); Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor at Ottumwa, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the acquisition of a rail line in Ottumwa, IA by the Colorado and Eastern Railroad Company subject to standard employee protective conditions.

DATES: This exemption will be effective on July 8, 1985.

Petitions to reopen must be filed by July 29, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30664 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary W. Flanders, 76 South Sierra Madre, Suite 230, Colorado Springs, CO 80903.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 27, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-16220 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-26]

Lee A. Turet, D.D.S.; Grant of Registration

On June 22, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Lee A. Turet, D.D.S. of 339 East Fordham Road, Bronx, New York 10458 and 164-10 84th Avenue, Apt. 1M, Jamaica, New York 11432 (Respondent) proposing to deny his application for registration, executed on December 18, 1983, as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's conviction on June 3, 1980, in the Supreme Court of Suffolk County, New York, of Attempted Criminal sale of a controlled substance. This violation of New York Penal Law § 220.31 is a felony relating to controlled substances.

By letter dated July 16, 1984, Respondent requested a hearing on the issues raised by the Order to Show Cause. The hearing in this matter was held in Washington, D.C. on January 31, 1985. Administrative Law Judge Francis L. Young presided. On April 10, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent 's counsel submitted a letter on April 25, 1985, stating that should the Acting Administrator deny Respondent's application for registration, the Respondent would take exception to such denial. Judge Young transmitted the record of these proceedings to the Acting Administrator on May 9, 1985. The Acting Administrator has considered this record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in April of 1979, an undercover investigation of Respondent was initiated by the narcotics section of the Suffolk County (New York) police department based upon information from a confidential informant. While acting in an undercover capacity, a police officer purchased controlled substances from Respondent on four separate occasions during the period April 21, 1979, through June 23, 1979. On April 21, 1979, Respondent sold the undercover officer six Quaalude tablets, containing methaqualone for $30.00. Subsequently, on May 15, 1979, Respondent sold the officer 50 Ionamin tablets, containing phentermine for $75.00. On May 23, 1979, Respondent sold the officer 100 Ionamin tablets for $135.00. At this meeting, Respondent asked the officer if he would be interested in buying some cocaine. The officer said that he would be interested. Respondent, however, never did produce any cocaine for sale to the officer. Finally, on June 23, 1979, Respondent agreed to sell the officer a quantity of Ionamin tablets for $375.00. Respondent handed over 272 Ionamin tablets to the officer and Respondent was then arrested. On all occasions, the tablets were produced from a prescription bottle bearing Respondent's name. At the time of the events described above, methaqualone was a Schedule II controlled substance and phentermine was a Schedule IV controlled substance. Methaqualone has since been transferred to Schedule I.

On September 28, 1979, Respondent was indicted by a grand jury in Suffolk County, New York on three counts of criminal sale of a controlled substance and four counts of criminal possession of a controlled substance. On the same day, in a separate indictment, Respondent was indicted with a co-defendant on one count of criminal possession of a controlled substance. All of these counts were based on the sales to the undercover officer outlined above. Respondent pled guilty to one count of attempted criminal sale of a controlled substance. This is a felony offense relating to controlled substances. Respondent was sentenced on June 3, 1980, to 60 days in the Suffolk County Jail and five years probation. Therefore, there is a lawful basis for the denial of Respondent's application. 21 U.S.C. 824(a)(2).

The Administrative Law Judge further found that at the time of the sales to the undercover officer, Respondent was an undergraduate student in college. Respondent admitted that at that time he was personally abusing controlled substances. During his period of probation Respondent was subjected to periodic urinalysis. There was no indication that any of the tests were positive. Respondent was discharged by his probation officer on March 8, 1983.

In June of 1983, Respondent was issued a "Relief from Civil Disabilities" by a Justice of the Supreme Court of the State of New York. This relief, which is granted only upon recommendation of the probation department, removes certain civil disabilities which one convicted of a crime may have under state law. This relief is temporary until June 3, 1985, and then becomes permanent unless revoked prior to that date.

Subsequent to his conviction, Respondent obtained a Bachelor of Science degree and then attended and graduated from dental school in June 1983. In applying to the States of New York and New Jersey for a dental license, Respondent truthfully disclosed his conviction. Both states granted him a license.

Respondent currently practices general dentistry in a practice with two other dentists. The Administrative Law Judge concluded that the ability to prescribe and administer Schedules III, IV and V controlled substances is absolutely essential to an effective general dentistry practice while the ability to prescribe and administer Schedule II controlled substances is desirable but not necessary.

At the hearing in this matter, Respondent offered the testimony of several character witnesses. Respondent also testified in his own behalf. The witnesses stated that even though they are aware of Respondent's conviction, they have the utmost confidence in Respondent as both a dentist and a human being. By affidavit, one of the dentists who employs Respondent testified that Respondent has displayed the highest professional ethics. The dentist further stated that it is imperative that Respondent be able to dispense medications to his patients.

Judge Young concluded that an absolute denial of Respondent's application would not be appropriate in this case. Respondent's illegal activities occurred six years ago. It appears that since that time Respondent has attempted to change his lifestyle. He successfully completed his probation and graduated from dental school. There is no evidence that since 1979, Respondent has ever been arrested or charged with any crime. Additionally, there is no evidence that he has abused any controlled substance since 1979. Respondent has gained the respect of his colleagues. However, the Administrative Law Judge further concluded that the facts leading to Respondent's conviction justify withholding Schedule II registration now.

Consequently, following Government Counsel's suggestion, the Administrative Law Judge recommended that Respondent be granted a registration limited to Schedules III, IV and V controlled substances. This registration should be conditioned upon Respondent's making monthly reports to the New York DEA Field Division of all controlled substances he prescribed, administers and dispenses. These conditions should continue until DEA feels confident that Respondent can be entrusted with a full, unconditional registration.

The Acting Administrator adopts the recommended ruling, findings of fact and conclusions of law of the Administrative Law Judge in their entirety. The Acting Administrator is charged with protecting the public from the diversion of controlled substances into the illicit market. The Acting Administrator believes that given the positive changes in Respondent's lifestyle and the issuance of a limited registration, the risk of such diversion by Respondent is slight.

Accordingly, based on the foregoing reasons, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Lee A. Turet, D.D.S. for registration under the Controlled Substances Act, be, and it hereby is granted in Schedules III, IV and V. the Acting Administrator further orders that this registration is conditioned upon Dr. Turet submitting monthly reports to the New York DEA Field Division of all controlled substances he prescribes, administers and dispenses. These reports shall continue until such time as DEA believes that Dr. Turet can be entrusted with a full, unconditional registration.

Dated: July 1, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-16110 Filed 7-5-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-5945 et al.]

Proposed Exemptions; Incline Glass, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below.

Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Incline Glass, Inc. Money Purchase Pension Plan (the Money Purchase Plan) and Incline Glass, Inc. Defined Benefit Pension Plan (the Pension Plan; together, the Plans) Located in Incline Village, Nevada

[Application Nos. D-5945 & D-5946]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sactions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plans of a parcel of improved real property (the Property) to Patrick and Ann Geary (the Gearys), parties in interest with respect to the Plans; provided that all terms of the transaction are at least equivalent to those which the Plans could obtain in an arm's-length transaction with an urelated party.

Summary of Facts and Representations

1. The Money Purchase Plan is defined contribution pension plan with 17 participants and total assets of $331,380 as of December 31, 1984. The Pension Plan is a defined benefit pension plan with 14 participants and total assets of $415,278 as of December 31, 1984. The Plans are sponsored by Incline Glass, Inc. (the Employer), a Nevada corporation engaged in the manufacture and sale of glass and glass products. The trustees of the Plans are the Gearys, who are the sole shareholders of the Employer.

2. During 1983, principals of the Employer determined that the Employer required additional office and warehouse facilities. After consulting with the accountants for the Plans, the Gearys determined that the Plans would acquire unimproved real property and construct thereon the new facilities needed by the Employer. Toward this end, on January 19, 1984 the Plans purchases a parcel of unimproved land (the Land) located at 2080 E. Greg Street in Sparks, Nevada, for a purchase price of $120,000. The Plans purchased the Land from G.D.B. Associates (G.D.B.) a partnership which is unrelated to the Plans. On March 5, 1984, the Plans entered into a contract with Kemp Construction, Inc., a party unrelated to the Plans, for the improvement of the Land with a 19,500 square-foot office and warehouse facility. The improvements were completed on July 20, 1984 at a total cost to the Plans of $412,885. The Land and the improvements (together, the Property) were appraised on March 15, 1985 by Stephen Johnson, MAI and Dudley Meyer, SRA (Johnson and Meyer), professional real estate appraisers with the firm of SRJ & Associates of Reno, Nevada, who found that as of that date the Property had a fair market value of $625,000. The Property is encumbered by a first deed of trust (the Mortgage) which secures a January, 1984 loan of $40,000 by the Plans from G.D.B. The terms of the loan which the Mortgage secures provide for monthly payments of interest only at the rate of two percent above the prime rate of the First Interstate Bank of Nevada, N.A., commencing March 1, 1984, with the full principal of $40,000 due on March 1, 1986. On August 1, 1984, the Employer commenced occupation of the Property under a triple net lease (the Lease) executed on the same date and continues to occupy the Property under the Lease. In recognition of the Lease's status as a prohibited transaction under section 406 of the Act, the Gearys wish to purchase the Property from the Plans and assume the Mortgage.

3. At all times during each phase of the Plans' acquisition and development of the Property and its Lease to the Employer, the Plans' interests have been represented by the Gearys, who were the sole fiduciaries of the Plans. The Gearys have appointed the First Interstate Bank of Nevada, N.A. (the Bank) as the new trustee of each Plan and to represent the interests of the Plans with respect to the transaction proposed herein. The Bank represents that the funds on deposit from and the loans to the Employer and the Gearys constitute less than one percent of the total deposits and outstanding loans of the Bank. The Bank will represent the Plans for all purposes in the proposed sale of the Property and transfer of the Mortgage to the Gearys and will require such transaction to occur under the terms and conditions described herein. The Bank represents that it has reviewed the proposed transaction, the Gearys' application for an exemption, and the financial statements of the Plans. Based on this review, the Bank has determined that the proposed transaction is in the best interests of the Plans for the following reasons: (1) It will terminate an ongoing transaction which is prohibited by the Act; (2) Because of the particular improvements on the Property, a flow of income from rental of the Property cannot be relied on; (3) Income from reinvestment of the cash to be obtained by the Plans as the purchase price of the Property will equal, if not exceed, the projectecd income from rental of the Property; and (4) Since the Property constitutes approximately 75 percent to the Plan's assets, a sale of the Property will remedy this lack of diversification of the assets of the Plans.

4. As a purchase price for the Property, the Gearys will pay the Plans cash in the amount of the Property's fair market value according to Johnson and Meyer's appraisal, less $40,000, which is the amount of principal which remains outstanding under the Mortgage which will be assumed by the Gearys. The Gearys will pay all costs related to the proposed sale. The purchase price will be allocated between the Plans according to the proportion of each Plan's ownership interests in the Property. Accordingly, the Pension Plan holds a 55.62 percent interest in the Property and the Money Purchase Plan holds a 44.38 percent interest in the Property, and each Plan will receive a corresponding percentage of the purchase price. Since the execution of the Lease on August 1, 1984, the Employer has paid the Plans monthly rental for the Property in the amount of $4,500, as specified in the Lease. Johnson and Meyer's appraisal of March 15, 1985 included an analysis of the Property's fair market rental value and concluded that as of that date the property's fair market rate was $5,850.00. Accordingly, the Employer has agreed to pay $5,850.00 as monthly rental for the

Property commencing April 1, 1985 until the Plan's proposed sale of the Property to the Gearys. For each month under the Lease prior to March 31, 1985, the Employer has also agreed to pay the Plans $1,350.00, which is the difference between the monthly rental previously paid and that determined by Johnson and Meyer to be the monthly fair market rental rate, plus interest at a rate determined by the Bank. The Gearys recognize that the Lease of the Property by the Employer from the Plans, commencing August 1, 1984 through the Plan's proposed sale of the Property to the Gearys, constitutes a prohibited transaction under the Act and the Code for which no exemption relief is proposed. Accordingly, they represent that the Employer will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of such prohibited transaction within 60 days of the publication in the **Federal Register** of a final notice of the granting of the exemption proposed herein.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for following reasons: (1) I will enable the Plans to achieve greater diversification of assets by disposing of a parcel of real property which constitutes a high percentage of Plan assets; (2) The Plans will be relieved of their remaining obligations under the Mortgage; (3) The Gearys will pay all costs related to the transaction; (4) The Employer will pay the Plans additional rental, plus interest, for each month of the Lease commencing August 1, 1984 through March 31, 1985 and will pay the Plans the full appraised monthly fair market rental rate commencing April 1, 1985 until the consumation of the proposed sale transaction; and (5) The interests of the Plans for all purposes in the sale transaction will be represented by a new and independent trustee, the Bank, which has determined that the proposed transaction will be in the Plans' best interest.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Big City Productions, Inc. Pension Trust (the Plan) Located in New York, New York

[Application No. D-6029]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed series of loans (the Loans) of no more than twenty-five percent (25%) of the fair market value of the assets of the Plan as of the date the Loans are made to Big City Productions, Inc., the employer and sponsor of the Plan (the Employer), provided that the terms and conditions of the Loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and (2) the guarantee of the Loans by Steven Steigman (Mr. Steigman), a party in interest with respect to the Plan.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire in ten years after the inception of the first of the Loans. Should the applicant wish to continue entering into loan transactions or to extend the maturity date of any existing Loans beyond the ten year period prescribed in this exemption, the applicant may submit another application for exemption relief.

Summary of Facts and Representations

1. The Employer, a New York State corporation since 1967, is engaged in print photography and the production of television commericals. All of the stock of the Employer is owned by Mr. Steigman who is also a participant of the Plan and serves as president of the Employer.

2. The Plan is a defined benefit pension plan with assets as of April 30, 1983, totaling $734,000. The Plan has six (6) participants as of December 31, 1983. The trustees (the Trustees) of the Plan are Mr. Steigman and Ms. Peggy Flaum, who is not an employee or shareholder of the Employer.

3. The Plan proposes to make a series of Loans to the Employer provided that the amount of any one of the Loans plus the outstanding balances of any existing Loans does not exceed 25% of the fair market value of the Plan's assets on the date any such Loans are made. The Employer proposes to use the proceeds from the Loans to add new space and renovate its sound stages in order to establish itself firmly in the industry.

4. The proposed Loans will bear a floating interest rate equal to Citibank's prime interest rate, published seven days prior to the payment date, plus an additional three percent (3%) per annum compounded semi-annually, provided the interest rate will never drop below 12% per annum. Repayment will be made by the Employer in equal semi-annual installments where each installment will be equal to 1/20th of the initial principal amount plus the accrued interest on the unpaid principal amount. The Employer will be entitled to repay all or a portion of the outstanding principal amount on any installment payment date. The Loans will be evidenced by a promissory note signed by Mr. Steigman, as president of the Employer for the benefit of the Plan. The maturity date for the first of the Loans will be for a term of ten (10) years. The maturity date of any of the other Loans in the series will not extend beyond that maturity date.

5. The Loans will be secured by a first mortgage which will be recorded on the parcel of improved real property (the Property) owned by Mr. Steigman and located at 5 East 19th Street, New York, New York. The Property is currently being leased as principal offices to the Employer on a year to year basis with an annual net rental of $80,000. Mr. William A. Lustig of Wilcox Real Estate Co., an independent, licensed real estate broker at 36 East 23rd Street New York, New York represents that as of March 23, 1984, the appraised value of the Property was $1,200,000. The Employer represents that it will maintain fire and extended coverage insurance on the Property during the term of the Loans and will designate the Plan as loss payee on such insurance policies.

The Loans will be further secured by the personal guarantee of Mr. Steigman. Mr. Louis J. Biscotti, C.P.A., president of Biscotti & Co., C.P.A., P.C., 265 Sunrise Highway, Rockville Centre, New York, who serves as an accountant for Mr. Steigman and who is a Plan Trustee, represents that as of April 30, 1984, Mr. Steigman's net worth exclusive of the value of the Property, exceeds $3 million. The terms of the Loans will provide that rental payments on the Property will be assigned to the Plan upon the default of any loan payment.

6. Mr. David Appel (Mr. Appel), president of David Appel Associates, Inc., 95 Madison Avenue, New York, New York has agreed to serve as the independent fiduciary for the Plan with respect to the Loans. Mr. Appel represents that he is qualified to serve in this capacity by virtue of his experience as an auditor for the Internal Revenue Service Employee Plan Division, as a consultant to a major pension administration and actuarial firm, as an advisor to over 150 pension clients on all aspects of pension administration, and because of his educational background in accounting, finance, and taxation.

Mr. Appel represents that he is independent, even though he has in the past advised the Employer on pension matters, because less that 1% of his aggregate annual gross receipts are attributable to the Employer. Mr. Appel states that he has been advised by Norman Seidenfeld, Esq. about the duties, responsibilities, and liabilities imposed by the Act on fiduciaries. Mr. Appel further represents that he understands his obligation to act solely for the Plan and its participants and beneficiaries.

Before agreeing to become a fiduciary with respect to the subject transactions, Mr. Appel reviewed other investments available in the market, the Plan's current asset mix, the Plan's funding and benefit payment projections, and consulted with the appraiser of the Property. Mr. Appel has concluded it is prudent and in the best interest of the participants and beneficiaries of the Plan to enter into the Loans for the following reasons:

(a) The ability of the Plan's other assets to adequately meet the projected benefit payments over the term of the Loans;

(b) The need for the Plan to diversify its assets;

(c) The fact that the aggregate outstanding balance of the Loans will not exceed 25% of the value of all the Plan's assets at the time any one of the Loans is executed;

(d) The high fixed return to the Plan on the Loans of 3% above Citibank prime rate on a floating basis with a minimum 12% annual rate;

(e) The personal guarantee of Mr. Steigman, who has substantial assets.

(f) The security on the Loans represented by the fair market value of the Property which is substantially more than three times the amount which is permitted on the Loans, and which is closer to six times such amount; and

(g) The value of the Property and the assignment of rental proceeds upon default of the semi-annual payments, which will constitute at least 150% of the outstanding balance of all the Loans. Mr. Appel further represents that he will not permit any additional collateral except the Property and the assignment of rents thereof to be pledged and states that should the value of such collateral fall below 150% of the outstanding balance on all of the Loans, he will exercise his authority to reduce such balance to the extent necessary to maintain at least a ratio of 150% at all times.

In performing his fiduciary duties, Mr. Appel has agreed that he will not approve any of the Loans regardless of the interest rate until he has verified to his satisfaction that at the inception of each of the Loans the interest rate and the other terms of the Loans have been made at a fair market value which is at least the same as those that would have been made as of the date of any of the Loans by an independent third party lender in an arm's-length loan transaction with the Employer and that the outstanding balance of any such Loans does not exceed 25% of the fair market value of the assets of the Plan as of the date such Loans are made. Mr. Appel further agrees: (1) To monitor the Loans not less than twice each year; (2) to confirm that the payments on the Loans are timely made; (3) to verify that the Property is adequately insured; and (4) to verify the adequacy of the security. In the event the Employer defaults in performing the obligations under the terms of the Loans, Mr. Appel represents that he will take whatever actions are necessary or appropriate to correct the default, collect penalties, and/or accelerate payment on the Loans, including retaining counsel for the Plan to institute legal action.

7. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Loans will be approved, monitored, and enforced by an independent fiduciary;

(b) The Loans will be secured by the value of the Property and the assignment of rents which at all times will be at least equal to 150% of the outstanding balances on the Loans;

(c) The exemption will be for a 10 year period from the date of the inception of the first of the Loans;

(d) The personal guarantee of Mr. Steigman further secures the Loans;

(e) The aggregate outstanding balances of the Loans will constitute no more than 25% of the Plan's assets;

(f) The Plan's independent fiduciary has determined that the Loans are prudent and in the best interest of the participants and beneficiaries of the Plan.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Professional Golfers Association of America Pension Plan Trust (the Plan) Located in Palm Beach, Florida

[Application No. D-6065]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the past sale out of the Plan of common stock of IBM, Masco, and Outboard Marine (the Stock) to a pension trust, American Resources, Inc. Retirement Trust (the American Trust), and a foundation account, the Edward C. Stuart Foundation (the Foundation), which were managed by Colonial Trust Company, N.A., a trustee for the Plan and fiduciary for the American Trust.

Effective Date: If the proposed exemption is granted, it will be effective June 1, 1984.

Summary of Facts and Representations

1. Established on January 1, 1970, the Plan is a qualified multi-employer defined benefit pension plan with a fixed contribution schedule and with approximately $9.2 million in assets on May 31, 1984. The Plan is sponsored by the Professional Golfers Association of America (the P.G.A.), an association with headquarters in Palm Beach, Florida, which is composed of some 14,000 golf professionals and assistant professionals. Approximately 650 of such golf professionals are participants in the Plan and are employees of contributing employers to the Plan, such as golf clubs and driving ranges located throughout the United States. The President, Vice President, Secretary/Treasurer, and three non-golf professionals or staff members of the P.G.A., serve on the Board of Trustees (the Board) which functions as the named fiduciary for the Plan. The current members of the Board and their relationship to the P.G.A. are as follows:

Mickey Powell, President, P.G.A.
James Ray Carpenter, Vice President, P.G.A.
Patrick Riley, Secretary/Treasurer, P.G.A.
Marshall Dann, P.G.A. Advisory Board
Richard Becker, P.G.A. Advisory Board
George Chane, P.G.A. Advisory Board

None of the members of the Board are Plan participants.

The Board is responsible under the terms of the Plan documents for the general administration of the Plan and for the establishment of a funding method for the Plan consistent with the requirements of law. According to section 9 of the Plan documents, the Board has discretion to select an investment advisor or agent and may appoint a corporate trustee (the Corporate Trustee) for the purpose of investing or reinvesting funds held in trust (the Funds) for use in providing benefits and paying expenses for the Plan. The terms of the trust agreement

(the Indenture) direct the Corporate Trustee to hold the Funds and to apply them "from time to time in accordance with the Indenture and the directions of the Board." The Indenture empowers the Corporate Trustee to buy, sell, convert, redeem, exchange, or otherwise dispose of any personal property or securities of the Plan. It is represented that effective January 1, 1983, the Board appointed Colonial Trust Company, N.A. (Colonial) as the Corporate Trustee. It is represented that the Board retained investment policy discretion for the Plan and appointed Colonial for the management of individual securities under policy guidelines.

2. As part of its assets on May 31, 1984, the Plan owned fourteen issues of common stock which represented 12.5% of the Plan's portfolio or $1,150,000 in market value. The remaining assets were invested in an insurance company guaranteed investment contract for $5,550,000 and in United States government securities. It is represented that Colonial was directed by the Board to liquidate the Plan's holdings in common stock, in order to invest the proceeds in government obligations and to follow a fixed income, maximum security posture. Accordingly, Colonial sold eleven of the Plan's fourteen issues on the market for a total value of $943,000. Of the three remaining issues, the Plan owned 800 shares of IBM, 2,700 shares of Masco, and 3,600 shares of Outboard Marine. Colonial represents that of the remaining three issues of the Stock, all were exchange listed shares with active trading.

3. Colonial seeks exemptive relief for the sale on June 1, 1984, of 200 shares of IBM, 1,200 shares of Masco, and 800 shares of Outboard Marine to the American Trust, and for the sale to the Foundation of 500 shares of IBM, 1,200 shares of Masco, and 2,500 shares of Outboard Marine. The sale to the American Trust and to the Foundation constituted 2.26% of the Plan's total portfolio and was a cash sale in the amount of $207,000. Colonial asserts that the Plan received a net gain of $39,948 on the sale of the Stock.

It was orally represented that Colonial had discretionary authority to direct the investments for the American Trust and for the Foundation. Further, Colonial represents that the American Trust and the Foundation were in no way related to the Plan and that the Stock was purchased as part of overall common stock acquisition programs by the American Trust and the Foundation which were managed by Colonial. Colonial maintains that it has received no benefit or increase in fee from either of the sales and that both the Plan, as the selling account, and the American Trust and the Foundation, as the purchasing accounts (the Purchasing Accounts) benefited by saving brokerage commissions of $.15 per share or approximately $960. Further, Colonial did not increase its fees obtained from the Purchasing Accounts as the total dollar amount of the asset base of each portfolio did not change as a result of the sales of the Stock into the Purchasing Accounts.

4. On June 1, 1984, in order to determine the fair market value of the Stock, Colonial placed market orders through the brokerage firm, Pain Webber, Inc., for 100 shares of IBM, 300 shares of Masco, and 300 shares of Outboard Marine owned by the Plan and received a price per share of $108¼, $26, and $20⅞ respectively. Subsequent to the sales to the Purchasing Accounts, it is represented that the price range quoted in the Wall Street Journal (WSJ) applicable to the date of sale June 1, 1984, was as follows:

Stock	Low	High
IBM	$107¼	$108⅜
Masco	26	26⅛
Outboard Marine	20⅞	21⅞

For each issue of the Stock sold to the Purchasing Accounts the Plan received at least the low price from the range of high and low prices as published in the WSJ on the day after the date of sale.

6. In summary, Colonial represents that the past sales of the Stock satisfied the criteria of section 408(a) of the Act as follows:

(1) The decision concerning the sale out of the Plan of the Stock was made by the Board and the sale into the Purchasing Accounts was made by Colonial;

(2) The price of the Stock was determined on the date of the sale by market orders placed through the brokerage firm of Paine Webber for a smaller amount of the same Stock owned by the Plan;

(3) The Plan received not less than the low price for the Stock as published in the WSJ on the day after the date of the sale;

(4) The sales of the Stock were a one time transaction for cash;

(5) Neither the Plan nor the Purchasing Accounts paid commissions to Colonial on the sales;

(6) The Plan experienced a net gain on the sales of the Stock; and

(7) The Plan purchased with the proceeds of the sales of the Stock government obligations that afford the Plan a fixed income and maximum security.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Tony's Auto Parts, Inc. Money Purchase Pension Plan (the Pension Plan) and Tony's Auto Parts, Inc. Profit Sharing Plan (the Profit Sharing Plan; Collectively, the Plans) Located in Marrero, LA

[Applications Nos. D-6091 and D-6092]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to loans (the Loans) by the Pension Plan and the Profit Sharing Plan, not exceeding 25 percent of each Plan's assets, to Bertucci Properties (the Partnership), a party in interest with respect to the Plans, provided the terms and conditions of the Loans are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans consist of the Pension Plan and the Profit Sharing Plan. As of January 31, 1985, the Pension Plan and the Profit Sharing Plan had total assets having a fair market value of $642,490 and $224,530, respectively. Also on January 31, 1985, each Plan had 24 common participants. The trustee of the Plans and decision-maker with respect to overall investments is the The First National Bank of Jefferson Parish.

2. Tony's Auto Parts, Inc. (the Employer), which maintains its principal place of business at Francis Street and Westbank Expressway in Marrero, Louisiana, is engaged in the sale of automobile parts and accessories. The Employer presently leases a one-story warehouse facility and the surrounding land (the Real Property) from the Partnership. The Partnership is composed of the officers and shareholders of the Employer as well as their spouses. The purpose of the Partnership is to invest in and develop real property similar to the subject Real Property. As of December 31, 1984, the

Partnership had total assets with a book value of $595,777.

3. An exemption is requested to permit the Plans to make two loans to the Partnership that will not exceed 25 percent of each Plan's assets. The Loans will enable the Partnership to provide long-term financing for the Real Property. The Loans, which will be evidenced by a promissory note, will provide for repayment in monthly installments of principal and interest for a 15 year term. The Loans will initially carry interest at the rate of 12½ percent for the first five years. At the end of each five year period, the interest rate will be adjusted by Jefferson Guaranty Bank (Jefferson) which will serve as the independent fiduciary for the Plans with respect to the proposed Loans. At each five year interval, the renegotiated interest rate will be one percentage point above the interest rate for a five year U.S. Treasury Note and it will feature a floor of 12 percent per annum.[1]

4. The Loans will be secured by a first mortgage on the Real Property. The deed to the Real Property will be recorded in favor of the Plans. In addition, the Real Property will be insured against casualty loss and the Plans will be designated as loss payees of such insurance. At all times, the value of the collateral will equal 150 percent of the combined outstanding balance of the Loan. If the value of the collateral ever falls below this level, Jefferson will either require the individual partners to pledge some of their personal assets as additional security or it will accelerate the Loan payments.

5. On February 13, 1985, Mr. Wayne Sandoz (Mr. Sandoz), an independent fee appraiser, member of the National Association of Real Estate Appraisers and president of Wayne Sandoz and Associates, Inc., placed the fair market value of the Real Property at $735,000. Mr. Sandoz also placed the fair market rental value of the Real Property at $72,450 per year.

6. As stated above, Jefferson will serve as the independent fiduciary for the Plans with respect to the proposed Loans. The exemption application states that although no principals of the Employer or partners in the Partnership sit on the board of directors of the bank, a limited commerical relationship exists. For example, the exemption application explains that the Employer maintains a checking account with Jefferson and Messrs. Joe and Peter Bertucci, who are officers of Employer, owe a total balance of $180,000 to the bank. However, the exemption application points out, these deposits and loans when aggregated represent less than one percent of the total deposits and loans of the bank.

Jefferson believes the Loans are appropriate transactions for the Plans and in the best interests of their participants and beneficiaries. Jefferson finds the Loan terms are based on customary business practices in the New Orleans, Louisiana area and are in accordance with commercially reasonable terms provided by local banks. Jefferson also finds that the proposed Loan terms are no less favorable to the Plans than those obtainable in a similar transaction with an unrelated party in the New Orleans area.

In addition, Jefferson represents that it has reviewed Mr. Sandoz' appraisal and finds the appraisal adequate and sufficient for a determination of the fair market value of the Real Property. Based on the appraisal, Jefferson has determined that the Real Property has a fair market value equal to at least 150 percent of the amount of the Loans.

Moreover, Jefferson has determined that there are sufficient remaining assets of the Plains to pay timely all anticipated benefits. In this regard, Jefferson has examined the overall investment portfolio for the Plans, considered each Plan's cash flow needs, given consideration to the necessity of a sale of these assets, examined the diversification of each Plan's assets in light of the proposed investment and reviewed the terms of the Loan as such terms comport with the Plans' investment scheme.

In addition to the duties described briefly in items 3 and 4 above, Jefferson will have final authority to determine whether the Plan will make the Loans. It will also monitor the Loans throughout their existence, serve as collecting agent and take all actions that are necessary and proper to enforce and protect the interests of the Plans and their participants and beneficiaries.

7. In summary, it is represented that the proposed Loans will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Loans will not represent more than 25 percent of the assets of each Plan; (b) Colonial, a competitor bank, has certified that the proposed Loan terms are competitive with, comparable to and reflective of current market lending conditions in the Greater New Orleans area; (c) the Loans will be secured by a first mortgage on the Real Property which has a fair market value that is greatly in excess of the total Loan amount; (d) Jefferson, as independent fiduciary, has determined that the Loans are in the best interests of the Plans and their participants and beneficiaries; and (e) Jefferson will completely monitor the repayment of the Loans and will enforce the Partnership's obligations thereunder.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

B.J. LaClair, M.D., P.A. Profit Sharing Plan and Trust Agreement (the Plan) Located in Sarasota, Florida

[Application No. D-6117]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of certain real property (the Property) by the Plan to Barry J. LaClair, M.D. and Rita C. LaClair, husband and wife and parties in interest with respect to the Plan, provided that the sale price of the Property is not less than the higher of either $210,000 or the fair market value on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with five participants and, as of December 31, 1984, its total assets were $689,250. The assets of the Plan were all investments in securities and cash except for the Property, which consists of two adjoining parcels of real property located at 3575 Bayou Louise Lane, Sarasota, Florida. There are two trustees for the Plan, Barry J. LaClair, M.D. and wife, Rita C. LaClair (the Trustees).

2. The Trustees are requesting an exemption from the prohibited transaction provisions of the Act which will permit the sale of the Property by the Plan to the Trustees for cash in an amount not less than the higher of either $210,000 or the fair market value on the date of the sale. An updated appraisal will be made at the time of the closing by the qualified independent appraiser, Mr. David P. Bouverat. Mr. Bouverat, who represents that he has been a full-

[1] Colonial Bank of New Orleans, Louisiana (Colonial), which has no present business relationship with any of the parties or their spouses, certifies that the proposed Loan terms are competitive with, comparable to and reflective of current market conditions in the New Orleans area.

time appraiser since 1971 and has no connections with the Plan, the Trustee, or the Property, is an associate appraiser in the firm of Professional Appraisal Services, 2080 Ringling Boulevard, Sarasota, Florida. As of February 14, 1985, Mr. Bouverat represented that the Property had a fair market value of $210,000. The Trustees represent that the Plan purchased the Property for investment purposes in 1971 for $35,186 and through 1984 incurred net expenses on the Property in the sum of $8,764. Under the law of Florida, the Sarasota County Property Appraiser determined that, as of January 1, 1984, the fair market value of the Property was $139,350. The Trustees represent that the purpose for the proposed sale is to permit the Plan to realize the optimum return on the Property and diversify its investments by converting approximately one-third its assets from non-income producing real property to more liquid, income producing investments. The Plan has no other prospective purchasers and can void all selling expenses by conveying the Property to Barry J. LaClair, M.D. and his wife. All expenses for the proposed sale will be paid by the purchasers. Neither Barry J. LaClair, M.D., nor his wife, Rita LaClair, jointly or individually, own any land which is adjoining or in the immediate vicinity of the Property; and, therefore, the proposed sale of the Property will have no impact, financially or otherwise, upon properties owned by the LaClairs. Since it appears that the market for real estate sales have declined and stabilized at diminished values, it is represented that denial of the exemption application would result in a potential economic loss to the Plan and its participants and beneficiaries. The existing structure on the Property is in ruins and is represented by the qualified independent appraiser to have no value. From 1971 through 1975, the Property produced a net income of $2,468, and since 1975 the Property has had no income.

3. In summary, the applicant represents that the transaction for which the exemption is requested satisfies the criteria of section 408(a) of the Act because (a) the sale will be a one-time transaction for cash; (b) the Plan will sell the Property at the highest price which can be realized from a sale of the Property on the open market to any other potential buyer; (c) the Plan will pay no expenses incurred in the sale; and (d) the Plan will be able to diversify its investments and invest in income producing investments and profit from the sale.

For Further information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Thomas R. Williams Self-Employed Defined Benefit Retirement Plan (the Plan) Located in Atlanta, Georgia

[Application No. D-6129]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the applciation of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed contributions of common stock of First Atlanta Corporation (Atlanta) to the Plan by Mr. Thomas R. Williams (Mr. Williams) [2], the Plan's sponsor, provided that the terms and conditions of each proposed contribution is no less favorable to the Plan than those available in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit Keogh plan covering only Mr. Williams, who is the Plan's sponsor. The First National Bank of Atlanta serves as the Plan's trustee (the Trustee). Mr. Williams is a director of Atlanta, which owns 100% of the stock of the Trustee. Mr. Williams also serves as an officer of the Trustee.

2. Mr. Williams proposes to contribute shares of Atlanta common stock to the Plan. The common stock of Atlanta is publicly held and is listed on the New York Stock Exchange. The shares of Atlanta common stock contributed to the Plan will be valued at the closing market price quoted on the New York Stock Exchange on the date of such contribution. The Plan will not incur any sales commissions or other expenses or charges in connection with the contribution of the Atlanta common stock.

3. Mr. Williams represents that he will not take a federal income tax deduction greater than the fair market value of the Atlanta common stock when contributed to the Plan, plus the amount of cash, if any, contributed to the Plan. Mr. Williams represents that at no time will he contribute Atlanta common stock to the Plan, which when added to the value of all other Atlanta common stock then held by the Plan, would cause the total value of Atlanta common stock to exceed 25% of Plan assets.

4. The applicant represents that there is little chance of there being a Plan participant other than Mr. Williams. If, however, there is ever another such participant, Mr. Williams will establish a separate defined benefit plan for such employee containing provisions comparable to those contained in the Plan.

5. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 4975 (c)(2) of the Code because:

(a) Contributions of Atlanta common stock will be valued at the stock's quoted closing market price on the day of contribution;

(b) Mr. Williams will not take a federal income tax deduction greater than the fair market value of the stock when contributed to the Plan;

(c) No sales commissions or other expenses will be incurred by the Plan with respect to any contribution;

(d) The total value of Atlanta stock contributed to the Plan will not exceed 25% of its total assets; and

(e) Mr. Williams, who is the only person affected by the transactions, desires that the transactions be consummated.

Notice to Interested Persons

Because Mr. Williams is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to other persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of the notice of proposed exemption.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things

[2] Since Mr. Williams is the only participant in the Plan there is no jurisdiction under Title 1 of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of July, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 16153 Filed 7-5-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-119; Exemption Application NO. D-5236 et al.]

Grant of Individual Exemptions; Ted McWilliams, Inc. Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth in a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and procedures set forth in ERISA Procedures 75-1 (40 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ted McWilliams, Inc. Profit Sharing Plan Located in Pittsburgh, PA

[Prohibited Transaction Exemption 85-119; Exemption Application No. D-5236]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to Ted McWilliams, Inc. for a ten-year period beginning July 1, 1984, provided that the terms of the lease are as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 25, 1985 at 50 FR 16370.

Effective Date: This exemption is effectively July 1, 1984.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Arnett Brokerage Profit-Sharing Plan (the Plan) Located in Lubbock, Texas

[Prohibited Transaction Exemption 85-120; Exemption Application No. D-5439]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of certain improved real property by the Plan to Arnett Brokerage Company, the Plan sponsor, provided the terms of the lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: August 22, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 15, 1985 at 50 FR 10556.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202 523-8881. (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Profit Sharing Plan) and Smart Chevrolet Co. Employees Retirement Plan (the Retirement Plan) (collectively the Plans) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 85-121; Exemption Application Nos. D-5669 and D-5670]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed loans (the Loans) by the Plans to Motors Finance Company (Motors), a party in interest with respect to the Plans, provided that the terms and

conditions of the Loans are at least as favorable as those which the Plans could receive in similar transactions with an unrelated party; and (2) the guarantee of the Loans by Smart Chevrolet Company and the individual partners of Motors.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15244.

Comments and Hearing Requests: The applicant notified the Department that the name of the First Arkansas Bankstock Corporation has been changed to Worthen Banking Corporation. The Department notes the correction and has determined that the proposed exemption should be granted as corrected.

Temporary Nature of Exemption

The Department has determined that in order to conform this exemption to existing policy, the exemption will bet temporary in nature and will expire seven years after the date of grant with respect to the making of any of the Loans. Subsequent to the expiration of the exemption, the Plans may hold the Loans for a period of 90 days provided such Loans were made duirng the seven-year period. Should the applicant wish to continue entering into Loans beyond the seven-year period, the applicant may submit another application for exemption.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Littonian Shoe Company Profit Sharing and Retirement Plan (the Littonian Plan) and the Employees Retirement Income Plan of the Community National Bank of Southern Pennsylvania (the Community Plan) Located in Gettysburg, Pennsylvania

[Prohibited Transaction Exemption 85-122; Exemption Application No. D-5837]

Exemption

The restrictions of sections 406(A), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975 (c)(1) (A) through (E) of the Code, shall not apply to: (1) The sale, on June 8, 1984, by the Littonian Plan and the Community Plan of certain real estate mortgage participations (the Participation Interests) to Community National Bank (Community); and (2) the proposed sale by the Community Plan to Community of two other Participation Interests, provided the total price paid for the Participation Interests was not or will not be less than their fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 19 1985 at 50 FR 15660.

Effective Date: This exemption is effective June 8, 1984.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Bartlemay & Associates, Inc., Money Purchase Pension Plan and Trust (the Plan) Located in Richmond, Indiana

[Prohibited Transaction Exception 85-123; Exemption Application No. D-5968]

Exemption

The restrictions of sections 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 13, 1975, to the purchase by the Plan of an interest in a land holding real estate partnership (BCJ Realty Interest) from Louis M. Jaffe for $39,000 and the sale of the BCJ Realty Interest to I.V. Bartlemay on December 29, 1984 for $64,340 in cash, provided that the amounts paid and received by the Plan were not greater than or less than (respectively) the fair market values on the respective dates of acquisition and sale.

Effective Date: The exemption is effective January 13, 1975.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 25, 1985 at 50 FR 16368.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-8753. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(C)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of July, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-16154 Filed 7-5-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-45]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCS).

DATE AND TIME: July 25, 1985, 8:30 a.m. to 6:30 p.m.; July 26, 1985, 8:30 a.m. to 3:00 p.m.

ADDRESS: Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, National Commission on Space, Suite 3212, L'Enfant Plaza East, SW, Washington, DC 20024 (202)/453-8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next twenty years. The Commission, chaired by Dr. Thomas O. Paine, consisits of 15 voting members. The meeting will be open to the public up to the seating capacity of the room (approximately 70 persons including Commission members and other participants).

Type of Meeting: Open

July 25, 1985

8:30 a.m.—Introductory Remarks.
8:45 a.m.—Shuttle and Space Station Programs.
1:00 a.m.—Space Station Challenges.
1:00 a.m.—Medical Operations and Life Sciences.
2:00 p.m.—Tours of JSC Projects/Facilities.

July 26, 1985

8:30 a.m.—Advanced Missions and Projects.
10:45 a.m.—Lunar and Extraterrestrial Resources.
1:00 p.m.—Executive Session.
3:00 p.m.—Adjourn.

L.W. Vogel,

Director, Logistics Management and Information Programs Division, Office of Management.

July 2, 1985.

[FR Doc. 85-16141 Filed 7-5-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

1. Date: July 22-23, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Museums and Historical Organizations, for projects beginning after December 1, 1985.

2. Date: July 25, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Museums and Historical Organizations, for projects beginning after December 1, 1985.

3. Date: July 29-30, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Small Colleges, for projects beginning after December 1, 1985.

4. Date: July 18-19, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

5. Date: July 22-23, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

6. Date: July 26, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

7. Date: July 29, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Susan H. Metts,

Acting Advisory Committee Management Officer.

[FR Doc. 85-16156 Filed 7-5-85; 8:45 am]

BILLING CODE 7536-01-M

Challenge/Advancement Ad Hoc Review Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Ad Hoc Review Committee to the National Council on the Arts will be held on July 24-26, 1985, from 9:30 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-16163 Filed 7-5-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Doc. No. 50—155]

Consumers Power Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption

from requirements of 10 CFR 50.44(c)(3)(iii) to Consumers Power Company (the licensee) for the Big Rock Point Plant, located at the licensee's site in Charlevoix County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.44(c)(3)(iii) which requires that high point vents be provided to the reactor coolant system, for the reactor vessel head, and for other systems required to maintain adequate core cooling if the accumulation of noncondensible gases would cause the loss of function of these systems.

The Need For The Proposed Action

Although the licensee has already installed vents on the emergency condenser in response to this regulation, these vents are not operational because the installation of seismic supports and test connections and the development of operating procedures have not been completed.

By letter dated April 19, 1983, Consumers Power Company requested an exemption from the requirements of 10 CFR 50.44(c)(3)(iii) on the basis that the emergency condenser is not used or needed to mitigate the consequences of accidents which might result in the generation of noncondensible gases.

Environmental Impacts of the Proposed Action

Since the emergency condenser is not normally used (no credit taken for its use in the licensing analysis for the Big Rock Point Plant) in accident scenarios which might result in the generation of significant amounts of noncondensible gases, the proposed exemption will not cause post-accident radiological releases to differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the emergency condenser vents to be fitted with seismic supports and test connections and for operating procedures to be developed and implemented. Such actions would not enhance the protection of the environment and would result in diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use or resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated April 19, 1983. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at North Central Michigan College, 1515 Harvard Street, Petosky, Michigan 49770.

Dated at Bethesda, Maryland, this 25th day of June 1985.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16169 Filed 7-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co. (Palisades Plant); Order Modifying License To Confirm Additional Licensee Commitments on Emergency Response Capability

I

Consumer Power Company (CPC) (the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes the operation of the Palisades Plant (the facility) at steady-state power levels not in excess of 2530 megawatts thermal. The facility is a pressurized water reacter (PWR) located in Van Buren County, Michigan.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

CPC responded to Generic Letter 82-33 by letter dated April 14, 1983. By letters dated September 13 and 16, 1983, and April 2, 1984, CPC modified several dates as a result of negotiations with the NRC staff. In these submittals, CPC made commitments to complete the basic requirements. CPC's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed CPC's Commitments. By letter dated June 29, 1984, as supplemented July 17, 1984, CPC requested that the completion dates for the Regulatory Guide 1.97 requirements (Items 3a. and 3b. of the Table attached to the June 12, 1984, Order) be extended. By letter dated August 23, 1984, the NRC granted this extension.

IV

The June 12, 1984, Order stated that for those requirements for which CPC committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, as modified by NRC letter dated August 23, 1984, CPC's letters dated June 29, 1984, as supplemented July 17, 1984, July 31, 1984, and April 22, 1985, provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS):

1b. SPDS fully operational and operators trained.

2. Detailed Control Room Design Review (DCRDR):

2b. Submit a summary report to the NRC including a proposed schedule for implementation.

4. Upgrade Emergency Operating Procedures (EOPs):

4b. Implement the upgraded EOPs.

The attached Table summarizing CPC's schedular commitments for the above items was developed by the NRC staff from the information provided by CPC. The staff reviewed CPC's June 29, July 17, July 31, 1984 and April 22, 1985 letters and discussed the dates with the licensee.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CPC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that license DPR-20 is modified to provide that the licensee shall: Implement the specific items described in the Attachment to this Order in the manner described in CPC's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland, this 1st day of July 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PALISADES PLANT.—LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
1a. Safety parameter display system (SPDS).	1b. SPDS fully operational and operators trained.	December 1986.
2. Detailed control room design review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	August 1986.
4. Upgraded emergency operating procedures (EOPs).	4b. Implement the upgrade EOPs.	December 1986.

[FR Doc. 85-16168, Filed 7-5-85; 8:45 am]

BILLING CODE 7590-01-M

Seminar on the Regulation of Spent Nuclear Fuel Transportation

From July 31 to August 2, 1985, the Nuclear Regulatory Commission and the Department of Transportation will jointly sponsor a seminar on the regulation of spent nuclear fuel transportation for designated State, local and Indian representatives. The seminar will be conducted at the Americana Congress Hotel, 520 South Michigan Avenue, Chicago, Illinois. The seminar is open to the public for attendance and observation and will take place from 9:00 a.m. to 5:15 p.m. on Wednesday, July 31; from 8:30 a.m. to 1:30 p.m. on Thursday, August 1; and from 9:00 a.m. to noon, Friday, August 2. If you plan to attend or have questions regarding this seminar, please contact Dr. Stephen Salomon at (301) 492-9881.

Dated at Bethesda, Maryland, this 1st day of July, 1985.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 85-16171 Filed 7-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center); Exemption

I

Iowa Electric Light and Power Company, et al. (the licensee) is the holder of Facility Operating License No. DPR-49 which authorizes the operation of the Duane Arnold Energy Center at steady state reactor power levels not in excess of 1658 megawatts thermal. The facility consists of a boiling water reactor located at the licensee's site near Palo in Linn County, Iowa. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements of Appendix R of 10 CFR Part 50. Appendix R contains the general and some of the specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. Section III.J of Appendix R of the rule requires that emergency lighting units with at least an 8-hour battery power supply shall be provided for all areas needed for operation of safe shutdown equipment. The objective of this requirement is that in the event of a fire, adequate lighting will be available to assure that the plant can be safely shutdown. As a result of its internal review, the licensee found that it could not assure that a battery power source for the control room lighting would be available for more than 90 minutes. The licensee has therefore requested an exemption from the literal requirements of Section III.J, and wishes to use 90-minute batteries backed by Division I and Division II diesels in lieu of the 8-hour battery requirements of Section III.J for the control room. The diesel generators will power the emergency lighting after the battery power is exhausted. Half the essential lighting in the control room will be powered by the Division I diesel generator and lighting distribution system and half by Division II. There is no single fire outside the control room that can disable both Division I and Division II lighting in the control room.

Based on its review of the above information, the staff has concluded that, in the event of a fire, the 90-minute batteries will provide sufficient illumination in the control room to enable the operators to shut the plant down. Beyond the 90 minutes, either or both the Division I and Division II diesel generators will continue to power sufficient control room lighting for more than 8 hours. The underlying purpose of Section III.J will, therefore, be served by operating in the proposed manner. Therefore, the exemption request to Section III.J of Appendix R should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Therefore, the Commission hereby approves (to the extent indicated) the following exemption:

Exemption is granted from the requirements of Section III.J of Appendix R to 10 CFR 50 pertaining to the need for providing emergency lighting with at least an 8-hour battery power supply for powering control room essential lighting.

The proposed use of emergency diesel-backed sources in lieu of an 8-hour battery power supply, as cited in Section II above, is acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this Exemption will have no significant impact on the environment (50 FR 20862, May 20, 1985).

A copy of the Safety Evaluation associated with this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401. A copy may be obtained upon request when addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 1st day of July, 1985.

For The Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16170 Filed 7-5-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549

Extension

Rule 17f-5 [17 CFR 270.17f-5]
File No. 270-259

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f-5, regulating custody of investment company assets located outside the United States.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

June 25, 1985.

[FR Doc. 85-16127 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14603; Filed No. 812-6141]

Application and Opportunity for Hearing, Great-West Life & Annuity Insurance Co. et al.

June 28, 1985.

Notice is hereby given the Great-West Life & Annuity Insurance Company (the "Company"), the Great-West Life Assurance Company ("Great-West"), and Pinnacle Series Account (the "Account") (the Company, Great-West, and the Account are collectively referred to as "Applicants"), at Solarium North Building, 7400 E. Orchard, Englewood, Colorado 80111, filed an application on June 25, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from sections 26(a)(2) and 27(c)(2) of the Act to permit the deduction of certain charges in connection with Applicants' offering of single premium variable life insurance policies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are

summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company, a wholly-owned subsidiary of Great-West, is a stock life insurance company organized under the laws of Kansas. Applicants state that the Account will be used to invest monies held under single premium variable life insurance policies, and that it is registering as a unit investment trust under the Act. Applicants state that the Account will invest solely in shares of the Maxim Series Fund (the "Fund"), a diversified, open-end management investment company.

Applicants state that under the policies, the Company will allocate the entire single premium payment to the Account and thereafter, on the first valuation date in each month during the first ten policy years, the Company will deduct an amortized initial charge in equal monthly installments. Applicants submit that the amortized initial charge consists of the sales charge and the state premium tax charge, which are 8.0% and 2.0%, respectively. In addition, on the first valuation date in each month until the policy is surrendered, a cost of insurance charge will be deducted, and the cost of insurance rate varies according to the attained age, sex, and premium class of the insured. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit these deductions.

Applicants assert that under Rule 6e-2, they could deduct the components of the amortized initial charge from the single premium prior to allocating monies to the Account, but by deducting these charges over the first ten policy years, there is an increase in the amount invested on a policyowner's behalf. This, Applicants submit, is in the policyowner's best interest, assuming typical investment performance.

With respect to the cost of insurance charge, Applicants state that under the policies, this charge is deducted monthly based on the net amount at risk under each policy. Applicants assert that in this fashion, each policy is assessed only the insurance charges commensurate with the risks under the policy. If, instead, this charge were deducted from the single premium payment, Applicants state they would be forced to make a large deduction based on assumptions about the length of time the policy would be in force, investment performance, and other factors necessary to determine the net amount at risk over the life of the policy. Applicants assert that their approach is more equitable and benefical to policyowners since it increases the amount invested on their behalf. Moreover, if required to deduct the cost of insurance from a single premium, Applicants assert it is likely that an insurance company would find it necessary to levy a risk charge to compensate it for the risk that its deduction would produce insufficient cost of insurance charges. Applicants further represent that the proposed method of collecting cost of insurance charges from cash value does not provide a means for assessing larger charges.

For the reasons stated above, Applicants submit that the requested relief from sections 26(a)(2) and 27(c)(2) is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 18, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16123 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23750; 70-7122]

Central and South West Corp. and West Texas Utilities Co.; Proposed Tender Offer and Issuance and Sale of First Mortgage Bonds

June 28, 1985.

Central and South West Corporation ("CSW"), a registered holding company, and its wholly owned electric utility subsidiary, West Texas Utilities Company ("West Texas"), have filed an application-declaration with the Commission subject to sections 6(a), 7, 9(a), 10, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

West Texas previously issued $15 million of first mortgage bonds, Series J, 15¼% due November 15, 2011 ("Bonds") and $30 million of its 16⅛% Debentures, Series 1982, due June 1, 2012 (collectively "Securities"). The Bonds may not be redeemed at a lower cost of money prior to November 15, 1986 and the Debentures may not be so redeemed prior to June 1, 1987. Because there has been a dramatic reduction in long term interest rates since the Securities were issued, West Texas believes that a refunding of the Securuties would benefit the Company's ratepayers by reducing the present interest costs to West Texas. Because the Securities cannot presently be called due to refunding restrictions of the Securities, West Texas proposes to repurchase for cash a substantial portion of the Securities through a tender offer ("Tender Offer") to the holders of the Securities. West Texas will hold open the offer for ten days, and requests authority to extend the offer period if Security holdes or market conditions require. West Texas believes that a Tender Offer for the Bonds would be approximately 119% of the principal amount, plus accrued interest. Similarly, a Tender Offer for the Debentures would be approximately 122% of the principal amount, plus accrued interest. The actual prices will be based on a number of factors, including the coupon rate of the Securities (on which date the Company, depending on then prevailing interest rates, may be presumed to call the Securities), the call price on such expiration date and the present market rates for similar bonds. Based upon limited information the Bonds and Debentures have recently bid at prices of 118.68% to 117.35% and 122.07% to 120.73% of the principal amount thereof, respectively.

West Texas proposes to retain Solomon Brothers Inc. as the company's tender agent and dealer-manager for the Tender Offer. As dealer-manager, Solomon Brothers will not itself become obligated to purchase or sell any of the Securities. It will act merely as the Company's agent disseminating the offer and receiving responses thereto. The dealer-manager's fee will be $2.50 per $1,000 principal amount of Securities ($67,500), plus reimbursement of out of pocket expenses in an amount not to exceed $20,000, and reimbursement of attorney fees not to exceed $15,000. As is customary, West Texas will be required to indemnify the dealer-manager for certain liabilities as

provided in the contract with the dealer-manager.

Depending on the amount of Securities tendered and the price paid for the tendered Securities, it will be necessary for West Texas to issue up to approximately $55 million aggregate principal amount of first mortgage bonds ("New Bonds") in order to fund the purchase of the tendered Securities. The New Bonds will be offered by competitive bidding in one or more series with up to a 30-year maturity period. West Texas requests the flexibility to issue a shorter maturity for the New Bonds should market conditions so dictate. The price to be paid to West Texas for the New Bonds (exclusive of any accrued interest which will be added to such price) will not be less than 98%, nor more than 101.75%, of the principal amount of the New Bonds. The New Bonds will be redeemable, but not earlier than five years from issue if it is part of a refunding at an effective interest cost lower than that of the particular series of the New Bonds. The New Bonds will be authenticated under the Indenture against available unused net expenditures aggregating approximately $148 million at April 30, 1985 and previously returned first mortgage bonds.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 22, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16124 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23749; 70-7113]

Central and South West Corp.; Proposal To Create Credit Subsidiary; Exception From Competitive Bidding

June 28, 1985.

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Dallas, Texas 75266-0164, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 thereunder.

CSW proposes to organize a new corporation, CSW Credit, Inc. ("Credit"), to be wholly owned by CSW. The initial purpose of Credit will be the purchase of accounts receivable (factoring) of its operating companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company, and Transok, Inc., at a discount and the financing of these purchases with debt.

Notice of the proposed transaction was given on May 21, 1985 (HCAR No. 23600). The Commission, by this subsequent Notice, is changing the date for interested persons to comment or request a hearing to July 15, 1985.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 15, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16126 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23751; 70-6903]

Jersey Central Power and Light Co.; Proposed Acquisition of Customers' Notes Related to Financing of Conservation Measures

June 28, 1985.

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, and electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed with this Commission a further post-effective amendment to its application in this proceeding pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

On December 1, 1982, the New Jersey Board of Public Utilities ("NJBPU") ordered all New Jersey utilities, including JCP&L, to develop and institute programs for financing the purchase and installation of storm windows, insulation, weatherstripping, caulking, attic ventilating fans, automatic day/night theromstats, and other conservation measures by their electric heating residential customers. In accordance therewith, JCP&L was authorized by this Commission to acquire from time to time until December 31, 1989, up to $2 million of obligations of its customers and to incur up to $60,000 of administrative and other related expenses (HCAR No. 23121 (November 16, 1983) and HCAR No. 23486 (November 19, 1984)).

The post-effective amendment states that on May 8, 1984, the NJBPU issued an order approving a Stipulation of Settlement entered into among JCP&L, the New Jersey Department of the Public Advocate, and the staff of the NJBPU, and ordering JCP&L to institute certain conservation programs including *inter alia* (A) an Electric Heat Conversion Program to provide financing for those electric heating customers with older, less efficient homes to convert to gas, oil, or other alternative heating systems, and (B) a Solar Water Heating Conversion Program to provide financing for electric hot water heating customers to convert to solar domestic water heating systems. Under these programs, the residential customer would arrange to have the work performed by certain eligible contractors who would be paid with funds borrowed by the customer from participating banks. Interest on such loans would range between zero percent and the prevailing market rate, depending upon the income level of the customer. The amount and term for

repayment of each such loan would range up to a maximum of $6,000 and 8 years, respectively. Notes executed by customers evidencing such loans made by the lending banks would be acquired by JCP&L with the loans being serviced and collected by such banks for JCP&L. The amounts of such acquisitions are included in the $2 million limit heretofore authorized in this proceeding.

The amended application and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 24, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as now amended or as it may be further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16125 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 27, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

AZP Group, Inc.

Common Stock, $2.50 par value, (File No. 7-8465) This security is listed and registered on one or more other national securities exchange and is reporting in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16128 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer: Kenneth Fogash, (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, and Information Services, Washington, D.C. 20549.

Extension

Proposed Amendment to Rule 4-08 of Regulation S-X 17 CFR 210.4-08

SEC File No. 270-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval a proposed amendment regarding disclosures of repurchase and reverse repurchase transactions.

The potential respondents include all entities that engage in such transactions and file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

June 27, 1985.

[FR Doc. 85-16188 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22188; SR-Amex-81-12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 28, 1985.

The American Stock Exchange, Inc. ("Amex") submitted on July 27, 1981, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange of 1934 ("Act") and Rule 19b-4 thereunder, to amend Amex Rule 421 ("Discretion as to Customers' Accounts"), which regulates member organization supervision of discretionary accounts. The proposal would delete the present requirement that each discretionary order must be initialed on the day entered by a general partner, officer or manager of the member organization who has been delegated written authority to give such approval and who is not exercising the discretionary authority.[1] The proposal would retain the requirement that discretionary accounts receive frequent supervisory reviews, but these reviews no longer would have to be conducted by a general partner or officer of the member organization. Finally, the proposal would add requirements that each discretionary order must be so identified on the order at the time of entry and that each member organization must maintain a written statement of its supervisory procedures governing discretionary accounts.[2]

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. 18037, August 14, 1981) and by publication in the **Federal Register** (46 FR 42386, August 20, 1981). 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

[1] In its filing the Amex stated that member organizations that do not have advanced monitoring capabilities will be required to retain their present order approval procedures as part of their internal surveillance system.

[2] The Amex further stated that (1) it will require its member organizations to maintain written supervisory procedures for handling discretionary accounts and (2) that these written procedures will be reviewed by Amex field examiners in their periodic compliance examinations to determine whether the procedures are satisfactory and are being complied with. *See* letter from J. Bruce Ferguson, Assistant Vice President, Amex, to Thomas Etter, Attorney, Division of Market Regulation, dated June 6, 1985.

requirements of Section 6 and the rules and regulations thereunder.[3]

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. 85-16181 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22187; SR-Amex-85-14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 28, 1985.

The American Stock Exchange, Inc. ("Amex") submitted on April 26, 1985, 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, to amend Amex Rule 576 ("Transmission of Proxy Material to Customers"), Commentary .80, to increase by $.10 certain Amex "approved charges by member organizations" to issuers for reimbursement of expenses associated with forwarding annual reports and proxy materials to beneficial owners. The charge for forwarding annual reports would be increased $.10 to $.20 (plus postage) per customer, and a new minimum annual report fowarding charge of $3.00 per issuer would be added to the rule. Charges for forwarding proxy follow-up material would be increased from $.30 to $.40 (plus postage) per customer, when mailed to all beneficial owners, and from $.50 to $.60 (plus postage) per customer, when mailed only to beneficial owners who have not responded to an initial mailing. The rule's basic $.60 charge for forwarding a proxy statement and annual report, when mailed as a unit, would remain unchanged.

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. 22051, May 20, 1985) and by publication in the **Federal Register** (50 FR 21535, May 24, 1985). No comments were received with respect to the proposed rule filing.

[3] The Commission notes that the language added to Amex Rule 421 by this proposed rule change would be similar to the existing text of New York Stock Exchange ("NYSE") Rule 408(b), which has been in effect since April 3, 1975.

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. 85-16182 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22185; Amex-85-24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing for Commission approval of a six month extension of the pilot procedure under the Exchange's equities allocations procedures which permits a newly listed company which so desires to select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* In June 1984, the Commission approved on a twelve-month pilot basis a "modified" equities allocation procedure proposed by the Exchange in order to increase the involvement of a newly listed company in the selection of the specialist unit in its stock.[1] The modified procedure, which was instituted in July 1984, has been available to companies as an alternative to the allocation which permits company participation in the selection process to a limited extent (the "limited participation procedure").[2] The modified procedure pilot is scheduled to terminate at the end of June 1985, and the Exchange is now requesting the Commission to approve a six month extension of the modified procedure upon its expiration.

The modified procedure was designed to address several concerns voiced by prospect companies. In the Exchange's efforts to list new companies, it became clear that the selection of a specialist is extremely important to prospect companies, and the ability to be more directly involved in the selection process and to be reassigned to another specialist if dissastisfied with the specialist's performance could serve as incentives to listing.

If a company chooses to participate in the modified procedure, the Allocations Committee selects a list of seven specialist units based on the same performance-related criteria it uses for every allocation, and the company selects its specialist from that list. A company must remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the company may request that the stock be reallocated should it become dissatisfied with its specialist. This is the case whether or not a company has participated in the selection process. The companay is expected to furnish an explanation of

[1] *See* Securities Exchange Act of 1934 Release No. 34-21062, dated June 18, 1984.

[2] Under the limited participation procedure, the Exchange's Committee on Equities Allocations ("Allocations Committee") submits a list of ten eligible specialist units to the company, which has the right to eliminate three units from further consideration. The Allocations Committee then raeconvenes to make its final selection from the remaining seven units.

the basis for its dissatisfaction, and if after counseling the company and the specialist unit such a change were still desired, the Exchange would reallocate the stock within 30 days. In any such reallocation, the Exchange would follow the limited participation allocation procedures as described above in footnote 2. Should a company so desire, the Allocations Committee may also select a specialist unit without any company participation. A company may invoke the reallocation request once during the year period following its listing.

Since its implementation, every company which has listed on the Exchange has chosen to participate in the selection process.[3] The Exchange believes, based on its experience under the pilot, that in many instances the availability of the new procedure has been of importance in listing companies. No newly listed company has requested a reallocation of the stock after it has become eligible to invoke the reallocation request.

The Exchange believes that the modified procedure has reasonably fulfilled its purposes: To assist the Exchange in attracting new listing and to preserve strong incentive for quality specialist performance.

During the pilot, a preponderance of allocations have been made to better performing units and the allocations have been distributed among a representative group of higher-rated units. It is the Exchange's view that the modified procedure has rewarded superior performance and provided incentives for specialists to continue to provide high quality markets and to improve performance.

(2) *Basis.* The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of section 11A(a)1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

[3] As of April 12, 1985, a total of 48 companies have selected the specialist units for their stocks under the modified procedure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) to avoid interruption of the pilot program, which is scheduled to terminate on June 30, 1985. The Exchange anticipates that, at the close of the six month period, it will request permanent approval of the modified equities allocations procedures.

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.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the pilot program is scheduled to expire on June 30, 1985. The Commission believes that accelerated approval is appropriate to allow the pilot program to proceed uninterrupted and to permit the Commission to further review the adequacy of Amex's procedures under the pilot. In addition, the Commission believes that a six month extension to December 31, 1985 will provide the Amex with opportunity to continue to assess the impact of the allocation procedures prior to requesting permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16184 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22184; SR-Amex-85-15]

Self-Regulatory Organizations; Notice of Proposed Rule Change by American Stock Exchange, Inc.; Relating to Proposed Amendment of Section 140 of the Amex Company Guide

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1985, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Section 140 of the Amex Company Guide to provide for a reduction in the Exchange's original

[1] The Amex filed Amendment No. 1 to the proposed rule change on May 31, 1985, to provide an expanded discussion of the purpose and statutory basis of the filing.

listing fee schedule for Canadian Companies listed on the Toronto Stock Exchange that seek to list on the Amex.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* On April 3, 1985, the Exchange submitted for SEC approval a joint plan between the Amex and the Toronto Stock Exchange ("TSE") implementing an electronic trading linkage between the two exchanges in dually-traded stocks.[2] The linkage is expected to commence on a pilot basis in approximately seven of the most actively traded issues. As experience is gained with the linkage, the pilot will eventually be expanded to include all inter-listed securities.

A potential benefit of the linkage arrangement to the Amex is the possibility that some Canadian companies listed on the TSE and also traded over-the-counter in the United States may decide to list on the Amex in order to obtain the benefits of the linkage for their shareholders. As an additional incentive to listing, the Exchange believes it is appropriate to offer a reduced original listing fee to all Canadian companies who list on the TSE or any other Canadian stock exchange.[3] A reduced fee for these Canadian companies is warranted based on the fact that they have already paid an original listing fee to the Canadian market for trading in their shares. While they may be seeking to expand the market for their shares, they may hesitate to pay a substantial additional fee to list on the Amex, particularly since the Canadian market usually remains the primary market in inter-listed securities. For the year up to March 29, 1985, the Canadian market has been the dominant market in 23 out of 37 inter-listed securities. Even where trading volume on the Amex has exceeded that on the Canadian exchange, the Canadian volume is in many cases substantial and often approaches that on the Amex. In view of these considerations, the Amex has decided to permit Canadian companies to list on the Amex by paying an original listing fee substantially below that applicable to domestic companies.

In reviewing the pricing options available, the Exchange believes that the simplest alternative would be to retain the existing rate structure, based upon the number of shares to be listed, and apply a fixed percentage reduction. In analyzing Toronto's listing fees, the yardstick against which Canadian companies are likely to judge reasonableness, it appears that a 50% reduction to current rates, subject to a $30,000 overall maximum, would bring Amex fees closely in line with expectations in Canada.

The following example demonstrates the manner in which the 50% reduction would apply:

Present schedule		Revised schedule (50% reduction)	
One time charge	$15,000	One time charge	$7,500
Listing of 2,000,000 shs. @ 1¢ per share	20,000	Listing of 2,000,000 shs. @ 1/2¢ per share	10,000
Total Fee for 2,000,000 shs.	35,000	*Total Fee* for 2,000,000 shs.	17,500
Listing of next 2,000,000 shs. @ 1/2¢ per share	10,000	Listing of next 2,000,000 shs. @ 1/4¢ per share	5,000
Total Fee for 4,000,000 shs.	45,000	*Total Fee* for 4,000,000 shs.	22,500
Listing of next 6,000,000 shs. @ 1/4¢ per share	15,000	Listing of next 6,000,000 shs. @ 1/8¢ per share	7,500
Total Fee for 10,000,000 shs.	60,000	*Total Fee*—10,000,000 shs.	*30,000

*Maximum fee.

To test the impact of reduced listing rates in Canada, it is proposed that these reductions be instituted on a pilot basis for a period of one year from the effective date of the linkage.

(2) *Basis.* The proposed amendment is consistent with section 6(b) of the Exchange Act in general and furthers the objectives of section 6(b)(4) in particular, in that it is intended to provide for the equitable allocation of reasonable listing fees among the companies that seek to list on the Exchange. As the Canadian companies are already listed on a Canadian stock exchange, a reduction for such companies in the fee normally charged by the Exchange to list on the Amex does not appear to unfairly discriminate among issuers as proscribed by section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Other

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[2] *See* Securities Exchange Act Release No. 22201 (April 30, 1985); 50 FR 19507 (May 8, 1985).

[3] In proposing this change, the Exchange would be following an existing precedent in which reduced rates are already extended to foreign issuers who register and trade American Depository Receipts ("ADRs") in this country.

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16185 Filed 7-5-85; 8:45 am]

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[Release No. 34-22202; File No. SR-NASD-80-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Withdrawal of Consent to Deferral of Commission Action as to Portion of Proposed Rule Change

On June 17, 1985, the National Association of Securities Dealers, Inc. ("NASD") withdrew its consent to a deferral of that aspect of the NASD options proposal (File No. SR-NASD-80-10) relating to the trading on NASDAQ of options on exchange-listed stocks which are not "covered securities" under Rule 19c-3 under the Securities Exchange Act of 1934 ("Act") (*i.e.*, those securities that were listed on an exchange after April 26, 1979),[1] and are otherwise eligible for options trading, if standardized options are not traded on such securities at the time the NASDAQ option is introduced. The NASD also requested Commission consideration of this aspect of its filing "at the earliest opportunity." [2]

Copies of the letter and the NASD's filing are available at the Commission and at the NASD. Interested persons are invited to submit comments to the Commission by July 18, 1985 by sending six copies of such comments to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] *See* Rule 19c-3 under the Act, 17 CFR 240.19c-3 (1984).

[2] Letter from John J. Flood, Senior Attorney, NASD to Alden Adkins, Division of Market Regulation, dated June 17, 1985.

Dated: July 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16175 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22183; File No. SR-NYSE-85-25]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to New Rule 98, Implementing Guidelines and Other Rule Amendments To Facilitate Diversified Member Organizations Becoming "Approved Persons" of Specialist Member Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of new Rule 98, implementing "Guidelines", and other rule amendments to facilitate diversified member organizations becoming "approved persons" of specialist member organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Introduction

From time to time, the Exchange has received indications from member organizations that are not now in the specialist business on the Exchange that they are interested in entering that business. There is currently no policy which prevents such firms from entering the business directly or associating with an existing specialist member organization. The basic difficulty that arises, however, is that many of the potential new entrants into the specialist business are diversified organizations involved in many, if not all, aspects of the securities business generally, such as underwriting, proprietary trading in listed stocks and their overlying options, etc. Under current regulations, these diversified member organizations would have to curtail many of their present activities in securities in which they might become registered, or in which an associated specialist member organization was registered.

The Exchange has developed a "functional regulation" proposal that attempts to balance the Exchange's and the Commission's regulatory concerns with the practical business needs of diversified member organizations. As discussed below, the Exchange believes that adoption of this proposal will result in significant benefits for the NYSE market.

The basic philosophy of the functional regulation proposal is that regulations appropriately imposed on a specialist member organization need not also be imposed on an associated member organization, provided that proper safeguards (essentially a formal organizational separation and specified internal controls), acceptable to the Exchange are in place.

Restrictions on "Approved Persons" of Specialist Member Organizations

The 1975 amendments to the Securities Exchange Act (the "Act") and the regulations thereunder generally require the Exchange to enforce compliance by members and persons associated with members with the Act, certain of those regulations, and applicable Exchange Rules. Under

[1] The Commission intends to publish a release describing NYSE's proposed Rule 98 and the American Stock Exchange's ("Amex") proposed changes to Amex Rules 190 and 193, and requesting public comment on the issues raised by such rule changes. (For Amex's proposed rule change incorporating exemptive guidelines for establishing an Exchange-approved "Chinese Wall" between an affiliated upstairs firm and a specialist unit, *see* Securities Exchange Act Release No. 21916 (April 2, 1985); 50 FR 14058 (April 9, 1985) (File No. SR-Amex-85-1)). Prospective commentators are urged to consider whether they would prefer to respond to this NYSE filing or to the Commission's separate release.

Article I, Section 3(g) of the Exchange Constitution, certain persons associated with a member or member organization are deemed to be "approved persons" of that member or member organization. Section 3(g) provides:

(g) The term "approved person" means a person who is not a member or an allied member or an employee of a member firm or member corporation, who has become an approved person as provided in the rules of the Exchange and who is either:

(i) A person who controls a member, member firm or member corporation, or

(ii) A person engaged in a securities or kindred business who is controlled by or under common control with a member, member firm or member corporation.

The terms "control", "person" and "engaged in a securities or kindred business" as used herein shall be defined in the rules of the Exchange.

The term "control" is defined in Exchange Rule 2 as follows:

The term "control" means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person shall be presumed to control another person if such person, directly or indirectly,

(i) Has the right to vote 25 percent or more of the voting securities,

(ii) Is entitled to receive 25 percent or more of the net profits, or

(iii) Is a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the other person.

Any person who does not so own voting securities, participate in profits or function as a director, general partner or principal executive officer of another person shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the exchange.

An organization entering into a "control" relationship, as defined above, with a specialist member organization would be deemed to be an "approved person" of the specialist member organization. Such a "control" or "approved person" relationship may arise where an organization becomes associated with an existing specialist member organization, or where it establishes a specialist member organization as a separate subsidiary or affiliate.

Currently, approved persons of specialist member organizations are subject to a number of Exchange Rules, which, among other matters, place restrictions on transactions effected for their accounts in specialty stocks on the Exchange, require that speciality stock options be used only for "hedging" purposes, prohibit "popularizing" of specialty stocks, and prohibit any "business transactions" with an issuer of a specialty stock. These restrictions are particularly set forth in the following Exchange Rules for which exemptive relief would be provided by the functional regulation proposal.

Rule 104 provides that a specialist may not effect any purchase or sale of a security in which he is registered for the account of an approved person associated with his organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets.

Rule 104.13 provides that any transaction for the account of an approved person associated with a specialist, in any stock in which the specialist is registered, must be for investment purposes and effected in a stabilizing manner.

Rule 105 provides that an approved person associated with a specialist member organization may trade in options overlying a specialty stock for hedging purposes only.

Rule 113.20 prohibits that an approved person who is associated with a specialist member organization from "popularizing" a stock in which a specialist in the member organization is registered.

Rule 460 prohibits a specialist and an associated approved person from engaging in "business transactions" with a company in whose stock the specialist is registered.

Regulatory Concerns

The trading restrictions discussed above were adopted to ensure that approved persons of specialist member organizations would not be placed in a more advantageous position vis-a-vis other market participants because of their association with a specialist member organization, and their possible access to confidential information concerning the specialist's "book" or the specialist's trading activities. The restrictions are also designed to minimize potential conflicts of interest between an approved person's trading for its own account and an associated specialist's trading to meet his market-making responsibilities under Exchange Rules.

The restrictions against popularizing are addressed to concerns about potential conflict of interest and the potential for market manipulation that may arise when an approved person makes recommendations, solicits orders, etc. in a stock in which an associated specialist may have a significant dealer position. The restrictions against "business transactions" with an issuer are addressed to potential conflicts of interest that may arise if an approved person were to have an interest in the financial viability of a company in whose securities an associated specialist makes a market.

The functional regulation proposal attempts to ensure that these regulatory objectives are not compromised, while at the same time providing enough flexibility so that the association of a member organization with a specialist member organization may be viewed as a viable business proposition for those interested in such an association.

While the Exchange anticipates that member organizations may, in particular, be interested in becoming approved persons of specialist member organizations, the functional regulation proposal and the proposed rule changes discussed herein would also be appropriate should a non-member broker or dealer or a non-broker or dealer organization desire to be associated with a specialist member organization as an approved person.

New Rule 98 and Implementing Guidelines

New Rule 98 provides essentially that an approved person which established a formal organizational separation between itself and an associated specialist member organization, and adopted internal controls and otherwise conducted its operations in conformity with "Guidelines" promulgated by the Exchange would be entitled to an exemption from the restrictions in Rules 104, 104.13, and 105, as noted above, and would be entitled to an exemption from Rules 113.20 and 460 to the extent indicated in those Rules as they are proposed to be amended.

The following are the principal elements of a functional regulation program acceptable to the Exchange as specified in the Guidelines:

- Formal organizational separation between approved person and associated specialist member organization;
- Only general managerial oversight permitted by approved person—no influence on specialist's particular marketmaker decisions;
- Confidential treatment of specialist's "book", information regarding trading positions, and information derived from margin and clearing arrangements;
- Generally, only those responsible for exercising managerial oversight, such as the approved person's chief executive officer, chief operational officer, chief financial officer and senior officer responsible for overseeing the specialist member organization may have access to privileged information

concerning the specialist member organization;

• Confidential treatment of information derived from business transactions between the approved person and the issuer of any specialty stock;

• Separate books, records, and financial accounting;

• All applicable capital requirements met separately;

• Approved person's proprietary orders sent to the Exchange (other than those which are part of a cross to position a block of stock for a customer, or orders left with the specialist) must be handled by an unaffiliated broker;

• Specialist member organization cannot give any market information to a broker associated with the approved person that it would not give to any other broker. The specialist member organization cannot initiate the giving of information to an associated broker, but may respond to an request for such information;

• An individual can be associated with both the approved person and the specialist member organization only for managerial oversight purposes; and

• No individual associated with the approved person may act as Competitive Trader or Registered Competitive Market Maker in a specialty stock.

As indicated above, the "Guidelines" require that the approved person and the specialist member organization be formally structured as two separate entities to avoid, to the greatest extent possible, the perception that conflict of interest problems are present. The Exchange notes that the Securities and Exchange Commission, in another context, recently indicated its preference for the "separate subsidiary" concept in an rule-making proposal suggesting that banks seeking to engage in certain securities activities could most appropriately do so through separate broker-dealer subsidiaries. (SEC Release No. 34-20357). The Commission's philosophy in this regard is that the two entities should be regulated according to their functional activities, and that regulations appropriately imposed on a broker-dealer need not also be imposed on the parent bank. Similarly, the Exchange's basic philosophy as to the functional regulation concept is that regulations appropriately imposed on specialist member organizations need not also be imposed on an associated approved person, provided proper safeguards, as per the Guidelines, are in place.

The Exchange believes that the internal controls specified in the Guidelines will maintain the confidentiality of material market information and minimize potential conflicts of interest. Internal controls to accomplish these purposes are well-known in the securities industry and have proven effective in various contexts within broker-dealer organizations, and the Exchange believes that properly structured and monitored internal controls will prove similarly effective in minimizing conflicts of interest between an approved person and an associated specialist member organization.

Exchange Approval Required

An approved person and an associated specialist member organization seeking the exemptions discussed above provided by Rule 98 must submit to the Exchange a written statement describing how the respective organizations intend to meet the requirements specified in the Guidelines. The written statement must specify, at a minimum:

• The specific kinds of internal controls to be adopted to satisfy the conditions stated in paragraph (b) of the Guidelines.

• The audit and compliance procedures to be adopted to ensure that the internal controls are maintained.

• The identity of individuals in senior management positions of the approved person (and their titles/levels of responsibility) to whom information about the specialist member organization's trading activities and stock positions is to be made available, the purposes for which it is to be made available, and the format in which, and frequency with which, it is to be made available.

• If applicable, a statement of the duties, and reasons why dual affiliation is necessary, as to any individual who will serve as an officer, director, partner or employee of both entities.

If, after reviewing the written statement submitted, the Exchange determines that the organizational structure, internal controls, and compliance and audit procedures are acceptable under the Guidelines, the Exchange shall so inform the approved person and the associated specialist member organization, at which point the exemptions provided by Rule 98 should be available. Absent such prior written approval by the Exchange, the exemptions provided by Rule 98 should not be available. It is not mandatory that an approved person seek the exemptions provided by Rule 98. If it chooses not to do so, it would simply remain, as at present, subject to the restrictions in the Rules noted above.

To emphasize the Exchange's commitment to maintaining the integrity of its market under the functional regulation proposal, the Exchange's Board of Directors, in approving Rule 98, adopted a resolution stating that any breach of the Rule and the implementing Guidelines would be considered "an extremely serious matter." The Board directed the Exchange staff, in any case brought alleging a breach of Rule 98 and the Guidelines, to seek as a penalty the de-registration of the specialists in the specialist member organization's most "profitable" stocks. The Board further directed the Exchange staff, in any such case where the Exchange Hearing Panel found for the staff but declined to impose such penalty, to appeal the sufficiency of whatever penalty the Hearing Panel did impose to the Board.

The "Popularizing" Exemption

An approved person entitled to the exemptions provided in Rule 98, would be permitted, as specified in Rule 113.20 as proposed to be amended, to popularize a specialty stock, if it makes appropriate disclosures that an associated specialist makes a market in the stock, may have an inventory position in the stock, and may be on the opposite side of public orders executed on the Floor of the Exchange in the stock. The Exchange believes that this approach should protect investors by providing them with sufficient information as to the existence of a possible conflict of interest. In the Exchange's view, this approach is entirely consistent with the underlying philosophy of the Securities Exchange Act, which places emphasis on providing adequate *disclosures* to investors.

Business Transactions With the Issuer of a Specialty Stock

The Exchange is proposing to amend Rule 460 to clarify the applicability of that Rule to an approved person of a specialist member organization, and to enable an approved person entitled to the exemptions provided by Rule 98 to engage in business transactions with an issuer of a specialty stock generally, and to engage in underwritings of a specialty stock to the extent permitted in Rule 460.20

Essentially, an approved person entitled to the exemptions provided by Rule 98 would be permitted to act as member of an underwriting syndicate or selling group, but not as a managing underwriter, for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered. When the

approved person is acting as a syndicate or selling group member as permitted, the associated specialist member organization must "give up the book" to another specialist member organization, which shall act as a full-time relief specialist for the period during which SEC Rule 10b-6 is applicable to the regular specialist member organization. The full-time relief specialist member organization would trade for its own account, not for the account of the regular specialist member organization, in meeting marketmaking responsibilities under Exchange Rules during the applicable Rule 10b-6 period. The approved person may act as an underwriter, in any capacity, for a distribution of nonconvertible debt securities of an issuer in whose securities an associated specialist is registered, and the specialist member organization would not be required to "give up the book" in such instance.

The Exchange is concerned that the possible public perception of a potential conflict of interest between an approved person, acting as underwriter, and its associated specialist member organization, acting as marketmaker, may result in some questioning of the integrity of trading on the Exchange in the security being distributed. The Exchange believes that any such public perception in this regard is likely to focus most particularly on instances where the approved person is acting as a managing underwriter, and thus has a greater financial stake in the successful outcome of the distribution than a syndicate or selling group member. To minimize any possible concerns that might arise in this area, the Exchange has determined not to provide exemptive relief at this time under the functional regulation proposal for an approved person to act as a managing underwriter of a stock, or security convertible into that stock, in which an associated specialist is registered.

The Exchange does believe, however, that exemptive relief as to such underwritings of a stock, or a security covertible into that stock, is appropriate where the approved person is acting only as a member of a syndicate or selling group. In such instances, the approved person's risk/reward is usually a good deal less than that of the managing underwriter. Thus, the Exchange believes that public perception of a potential conflict of interest would not be likely to arise in such cases, to any significant degree, particularly since participation in underwriting syndicates or selling groups is generally understood to be a common business practice for most major diversified member organizations. In any event, to the extent there is any public perception of a conflict of interest in this regard, the Exchange believes that SEC Rule 10b-6, which calls for participants in a distribution of securities to be "out of the maket" for specified periods, should be sufficient to address the matter. As noted above, Rule 10b-6 would require the specialist member organization associated with the approved person acting as syndicate or selling group member to "give up the book" during the applicable Rule 10b-6 period. The effect of Rule 10b-6 is simply that a specialist member organization would not be "at the heart of the market" for the critical period when potential conflicts of interest are most likely to arise.

The Exchange does not believe that an approved person entitled to the exemptions provided by Rule 98 should be subject to any restrictions on the scope of its underwriting activity as to distributions of nonconvertible debt securities. Specialists are not registered in such debt issues on the Exchange, and are obviously not in a position, as specialists, to trade to influence the price of the debt security being distributed, and, in any event, the price movements in such debt security are not related to price movements in the issuer's stock or securities convertible into that stock. Thus, the Exchange does not believe that there are any real or perceived conflicts of interest between an approved person and an associated specialist member organization in this situation.

The Act and Commission Rules Promulgated Thereunder

The Exchange notes that a number of provisions of the Act and of the rules promulgated thereunder by the Commission include language that might, under ordinary circumstances, justify the interpretation that a parent organization and its controlled subsidiary should be considered one and the same organization for purposes of the provision. For example, several such provisions prohibit any person from engaging in specified activity "directly or indirectly". Such language might ordinarily be thought to require that activity of the kind prohibited that is engaged in "directly" by the parent, or "indirectly" by the parent through its controlled subsidiary, must be combined for the purpose of determining whether the parent has violated the provision. Other provisions require a person to take certain action, such as the filing of a report with the Commission, whenever the person, "directly or indirectly", acquires the "beneficial ownership" of certain securities. Still others refer to the "net" securities position of a person without indicating whether or not the positions of the parent and its controlled subsidiary are to be aggregated in determining the parent's "net" position.

The Exchange is in the process of attempting to identify the provisions of rules promulgated under the Act that it believes should be reviewed as to their potential applicability should an approved person acquire control of a specialist member organization pursuant to the functional regulation proposal. The Exchange hopes to discuss this matter with the Commission's staff in order to be familiar with the staff's position with respect to these provisions. In general, however, the Exchange believes that, for the purposes of the Act and the rules promulgated thereunder, where the exemptions provided for in Rule 98 are available, an approved person that controls a specialist member organization and the specialist member organization should be viewed as unaffiliated organizations. Each separately would be subject, of course, to the provisions of the Act and the rules thereunder, but their activities and securities positions should not be required to be aggregated. The Exchange believes that this treatment is justified as a direct result of the formal organizational separation and the internal controls that will be required by the Exchange's functional regulation proposal. Indeed, it would be inconsistent with that proposal to treat the approved person parent and its controlled specialist member organization as one and the same. Such an interpretation would require that the separation that is sought to be assured by the Exchange's functional regulation proposal be breached routinely in order for the approved person and its controlled specialist member organization to be sure that on an aggregated basis the approved person or the specialist member organization is not violating an Act provision or regulation.

Market Surveillance

The Exchange believes that the functional regulation proposal contains sufficient safeguards that satisfactorily address concerns dealing with possible market manipulation and potential conflicts of interest. In addition, the Exchange wishes to emphasize that the overall "surveillance environment" today is much more sophisticated than it was when the Rules for which exemptive relief is being proposed herein were first adopted. The Exchange has both on-line and off-line automated

surveillance capability, and monitors trading on both a real-time and next-day basis. The Commission itself recently acknowledged the significant technological changes with respect to market surveillance when it terminated its Market Oversight and Surveillance System project. Central among the Commission's reasons for concluding the project were the Exchange's development of the Central Collection and Reporting System (with other self-regulatory organizations) and the Intermarket Surveillance Information System, and its substantial progress towards achieving a complete and accurate audit trail. SEC, *Final Report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce regarding the Market Oversight and Surveillance System (January 15, 1985).*

The Exchange believes that today's sophisticated surveillance capabilities, coupled with member organizations' audit and compliance procedures, provide sufficient means for detecting unusual trading activity by specialist member organizations and any approved persons associated with them. In the Exchange's view, the functional regulation proposal is thus a regulatorily sound approach for facilitating the entry into the specialist business of diversified member organizations.

Benefits of the Functional Regulation Proposal

As noted above, the Exchange believes that the functional regulation proposal responds, in a regulatorily viable manner, to the interest expressed by a number of member organizations in entering the specialist business without being subject to undue restrictions on their other lines of business. In addition to satisfying this interest of member organizations, the functional regulation proposal has two major benefits for the Exchange market in general:

(1) It will strengthen the capital base of the auction market system.

(2) It will stimulate competition among marketmakers on the Exchange.

Capital. Large diversified organizations have the capital to expand their businesses, and broad experience with all aspects fo the modern financial services industry. If such organizations enter the specialist business, they can reasonably be expected to provide additional capital for marketmaking on the Exchange. Such additional capital, in turn, should add to the depth and liquidity, and thereby the overall quality, of the Exchange's market.

The Exchange notes that while specialists' capital is, on the whole, more than adequate to meet the needs of today's markets, some concerns have been raised that the increasing "institutionalization" of the market, and the increasing volatility of trading, will require specialists to commit greater capital, and be willing to assume some additional market risk in accommodating large-size orders and minimizing short-term price fluctuations, in the future. The current specialist system would benefit significantly from the additional capital contributions of large diversified organizations which have the financial resources to devote to specializing and, because of their diversified nature, have a somewhat greater ability to assume risk than an organization whose business consists exclusively of specializing. To help ensure that any such additional capital contributions are used for strengthening the overall capital base of the Exchange's auction market system, paragraph (b)(vi) of the Guidelines provides that the specialist member organization's capital must be dedicated exclusively to specializing activities, and must not be at risk for any liabilities of the approved person.

Competition. The functional regulation proposal can be expected to stimulate and enhance competition within the specialist community and attract new specialist "talent" to the Floor. Today, specialist memer organizations compete to be allocated the securities of companies that become newly-listed on the Exchange. Such allocations, in many ways a "lifeblood" of the specialist business, are awarded on the basis of demonstrated, high-quality marketmaking performance. Well-capitalized diversified organizations can be expected to add to this competition for new allocations, and such enhanced competition should lead to a higher level of overall market quality on the Exchange.

In addition, as noted in Item 4 below, the functional regulation proposal will remove a burden on competition, not justified under the Act, as between the Exchange and other market centers.

Statutory Basis

Since, as noted above, the entry into the specialist business of diversified organizations is expected to have beneficial effects on the overall Exchange market, the proposed rule changes can be said to promote the purposes of section 6(b)(5) of the Act in that they "remove impediments to and perfect the mechanism of a free and open market . . . and, in general, protect investors and the public interest."

By permitting diversified member organizations to enter a business as to which they are currently effectively excluded by regulation, the proposed rule changes promote the purposes of section 6(b)(5) in that they "are not designed to permit unfair discrimination between . . . brokers or dealers . . ." In this regard as well, the proposed rule changes promote the purposes of section 6(b)(8) in that they remove a "burden on competition" as to specializing on the Exchange not necessary to further the purposes of the Act.

By removing a burden on competition, as discussed in Item 4 below, as between the Exchange and other market centers, the proposed rule changes promote the purposes of section 11A(a)(1)(C)(ii), which calls for "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not justified in furtherance of the purposes of the Act. In fact, as discussed above, by facilitating the entry into the specialist business by diversified organizations, the proposed rule changes can be said to enhance competition in marketmaking on the Exchange.

The Exchange notes further that the functional regulation proposal can be said to remove a burden on competition in that, today, diversified organizations can enter the specialist business, either directly or by becoming associated with a specialist organization, on a regional exchange without being subject to many of the regulatory restrictions that apply to specializing on the Exchange, including the restrictions for which exemptive relief would be provided by the functional regulation proposal. Quite simply, a diversified broker-dealer firm can today enter the specialist business on a regional exchange without being subject to regulations that would impede its other business activities. In fact, several major diversified organizations have recently entered the specialist business on regional exchanges. The Exchange believes that the disparity in regulation has the effect of directing diversified firms that want to enter the specialist business, but which do not want to disrupt their other lines of business, to become specialists in other markets rather than on the Exchange. In the Exchange's view, this disparity in regulation thus effectively imposes a two-fold burden on competition: as between the Exchange and other market centers, and as between existing

specialist member organizations on the Exchange and diversified organizations that wish to enter the specialist business in this market. The Exchange believes that the functional regulation proposal, by providing exemptive relief from certain specialist regulations, will effectively provide a "fairer field of competition" in both regards, and thereby remove a burden on competition that is not justified under the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In a Special Membership Bulletin dated July 26, 1984, the Exchange described a functional regulation proposal similar in basic concept and in most "technical" respects to the one being filed herein, and requested comment from members and member organizations on the desirability of the Exchange's adopting the proposal, and the practicality of the particular "technical" details. The Exchange received 12 letters, on behalf of 13 commentators, in response to this Special Membership Bulletin. Nine of the commentators, including four major diversified firms, Merrill Lynch, Dean Witter, Paine Webber, and Prudential-Bache, supported the functional regulation concept. Three commentators expressed opposition to the concept. One commentator, the Security Industry Association, did not take a formal position on the matter, but expressed several concerns that are noted below.

Those who commented in favor of the functional regulation proposal generally believed that it would (i) satisfactorily address potential conflict of interest concerns; (ii) strengthen the capitalization of the specialist system and add to the depth and liquidity of trading on the Exchange; and (iii) enhance competition among marketmakers on the Exchange.

Those who commented in opposition to the functional regulation proposal contended generally that (i) it would not satisfactorily address conflict of interest concerns; (ii) it might result in an undue concentration of member organizations in the specialist business on the Exchange; and (iii) it might result in institutional investors directing order flow in a particular stock only to a member organization associated with the specialist member organization registered in that stock. For the reasons stated in its Rule 19b-4 filing with the Commission, the Exchange believes that its functional regulation proposal does satisfactorily address conflict of interest concerns, and will not necessarily result in either an undue concentration of member organizations in the specialist business on the Exchange, or any monopolization of institutional order flow in a stock by a member organization associated with the specialist member organization registered in that stock.

The comments received on the functional regulation proposal are summarized in detail in the Exchange's Rule 19b-4 filing with the Commission, along with the Exchange's responses to particular questions and issues raised by each commentator.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16178 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22186; File No. SR-NYSE-85-23]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Material Designated as Paragraphs 2128A and 2128B of the Exchange Rules Regarding Clarification of the Definition of the Term "Sales Sheet" as an Official Exchange Publication

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes would define the term "sales sheet" contained in footnotes to Paragraphs 2128A and 2128B of the Exchange Rules as the list of transactions published by The New York Stock Exchange or its authorized agents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule changes is to revise the definition of the term "sales sheet"

contained in footnotes to Paragraphs 2128A and 2128B of the Exchange Rules.

The proposed rule changes are necessary in order to reflect the Exchange's intent that the definition of the term "sales sheet" not be unduly restricted to a list of transactions published by one named corporate entity. The footnote, as presently worded, gives one publisher, Francis Emory Fitch, Inc., a unique and exclusive status.

The proposed revision would redefine "sales sheet" to en- compass the list of transactions published by the New York Stock Exchange or its authorized agents, and would thus eliminate the exclusive status afforded to one publisher by the existing rule.

(2) *Statutory Basis.* The statutory basis for the proposed rule changes are section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("The Act") which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

These rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16183 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22174; File No. SR-OCC-85-8]

Self-Regulatory Organizations; Options Clearing Corp.; Proposed Rule Change

Options Clearing Corporation ("OCC") on May 29, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. OCC's proposal would amend Article VI, section 7 of OCC's By-Laws and section 7 of OCC's Restated Participant Exchange Agreement ("PEA") to clarify the responsibility for losses resulting from a Participant Exchange's untimely submission of a matched trade report to OCC. The Commission is publishing this notice to solicit comments on the proposed rule change.

Under OCC's current By-Laws, OCC is not obligated on any Exchange transaction until it accepts the transaction [1] and such acceptance is subject to OCC's prior receipt of a matched trade report reflecting the transaction.[2] OCC's proposal would amend Article VI, section 7 of its By-Laws to require that OCC's obligation to accept an Exchange transaction is subject to receipt of a matched trade report before such time as OCC specifies.[3] Additionally, the proposal would provide that OCC would not be obligated to any purchaser or writer for losses resulting from an Exchange's untimely filing of a matched trade report or from any error in a matched trade report as filed.

OCC's proposal would also amend section 7 of the PEA. That Section currently provides that a Participant Exchange's obligation to indemnify OCC for losses regulating from untimely reports does not apply to a delay caused by a Clearing Member in the filing of trade information with the Exchange. Under OCC's proposal, this provision would be deleted.

OCC's believes the proposed rule change is necessary because a Participating Exchange's failure to submit a timely matched trade report to OCC could expose Clearing Members to financial loss. If OCC delays its nightly processing to accommodate receipt of an untimely report, OCC might be unable to deliver its own reports to Clearing Members, including assignment notices, until after the opening of trading on the day after trade date. In this situation, Clearing Members carrying cash-settled options could incur losses.[4] Alternatively, if OCC proceeds with its nightly processing before receiving the untimely report, exercise notices for long positions opened on the previous day would be rejected because those positions would not yet appear on OCC's books. When OCC subsequently processes the untimely report, the holders of the long positions, instead of

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[1] OCC By-Law Article VI, Section 5.

[2] OCC By-Law Article VI, Section 7.

[3] OCC's Restated Participant Exchange Agreement between OCC and its five Participant Exchanges provides that each Exchange must submit to OCC a daily report of matched trades prior to such time as OCC may prescribe, but not earlier than 7:00 P.M. Central Time on trade date. OCC requires Participant Exchanges to submit those reports to OCC by 1:00 A.M. Central Time the day after trade date.

[4] For example, when the short leg of an index option spread is assigned, the assigned Clearing Member is exposed to market risk on the long leg until that leg is closed out or until the short leg is re-opened. If that Clearing Member is not notified of the assignment until after the opening of trading on the next day, it could sustain a loss on the long leg if the market moves adversely between the opening and the time when the Clearing Member learns of the assignment.

being exercised, still would be holding open positions and, consequently, would be subject to market risk.[5] Conversely, because OCC would have no record of closing purchases, exercise notices might be assigned to short positions that the writers had attempted to close. Thus, when the late report is processed, the closing purchases would be converted to opening purchases which entail market risk.

OCC believes that the proposed rule change is consistent with section 17A of the Act in that it promotes the safeguarding of securities and funds in OCC's custody or for which OCC is responsible. OCC believes that the proposal will protect OCC against potential financial exposure from events over which OCC has no control.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at OCC's principal office.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, please send six copies of your comments to the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by July 29, 1985. Please refer to File No. SR-OCC-85-8.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

June 26, 1985.

[FR Doc. 85-16180 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22193; File No. SR-PSE-85-11]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc. ("PSE"); Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") submitted a proposed rule change on May 20, 1985, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to exempt options on Convergent Technologies, Inc. ("CVGT") an over-the-counter ("OTC") stock, from the exchange's listing standards based on price.[3] The Commission solicited comments on the proposed rule change, but received none.[4]

Currently, PSE Rule VI, section 12(a)(iv) provides, in pertinent part, that the exchange may list options on those underlying securities for which the market price per share of the underlying security shall have been at least $10.00 on each business day of the three calendar months preceeding the date of selection. Because of the lower per share market price of CVGT stock, PSE's current listing standards would prohibit an overlying option from being listed on the exchange.[5]

Nevertheless, in its filing, PSE recites the Commission's previously stated belief that it might be appropriate to permit options trading on stocks such as CVGT, which has a lower per share market price than required by the exchange's current listing standards.[6] In this connection, the Commission indicated that the substantial trading volume and exceptionally high market values of OTC stocks such as CVGT appear to be sufficient to protect against the speculative abuse or manipulative potential which the price per share criterion is designed to address.[7]

PSE further states that it believes the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b)(5) thereof, in that the rule change will permit investors in CVGT stock to obtain the hedging benefits of trading standardized options in an auction market and that the capitalization, volume, and number of shareholders of CVGT stock counterbalance the lower per share market price of CVGT stock.

For the reasons stated above, and in Securities Exchange Act Release No. 22026, the Commission finds that PSE's proposal to exempt CVGT securities from the exchange's listing and delisting criteria regarding price is consistent with Section 6 of the Act.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16179 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22191; SR-Phlx-85-14]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval; Relating to the Extension of Applicability of Allocation and Specialist Evaluation Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 5, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. Text of Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx") or ("Exchange") hereby proposes to extend the applicability of its allocation and evaluation rules (Rules 500 through 506) through September 30, 1985.[1] These rules govern

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[5] That risk would be substantial to holders of options on equity securities that were the subject of a tender offer when the previous day was the expiration date of that offer.

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] Recently, the Commission approved a PSE proposed rule change to permit the trading on PSE of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act but are designated as Tier I National Market System Securities pursuant to Rule 11Aa2-1(b)(1) of the Act. *See* Security Exchange Act Release No. 22103 (May 31, 1985), 50 FR 24076 (June 7, 1985).

[4] The proposal was noticed for comment in Securities Exchange Act Release No. 22070 (May 22, 1985), 50 FR 23095 (May 30, 1985).

[5] In its filing, PSE indicates that its delisting standards also would jeopardize listing CVGT options.

[6] *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310, 20325 n.150 (May 15, 1985), and accompanying text.

[7] *Id.*

[8] The Commission similarly approved a proposed rule change submitted by the Chicago Board Options Exchange, Inc. ("CBOE") to exempt MCI Communications ("MCI") from CBOE's listing and delisting standards based on price. *See* Securities Exchange Act Release No. 22154 (June 17, 1985) 50 FR 25809 (June 21, 1985).

As a general matter, however, the Commission believes that such ad hoc listings of additional options in the absence of amendments to self-regulatory organizations' ("SROs") general eligibility criteria for underlying securities are inappropriate. In this regard, the Commission understands that the options SROs are working together to develop uniform listing criteria that would apply generally to CVGT, MCI, and other similarly situated underlying securities. The Commission expects that such revised criteria will be submitted by the exchanges in the near future.

[1] *See* letter from Philip Becker, Vice President and Associate General Counsel to Michael Cavalier, Branch Chief, Division of Market Regulation, dated June 10, 1985.

the Exchange's pilot program providing for evaluations of and stock allocations to Phlx specialists, alternate specialists and registered options traders.

These rules were first approved by the Commission on October 1, 1982 and were to continue in effect only through October 1, 1984. Under Rule 506, these rules can be extended only pursuant to further approval by the Commission. Most recently, in November 1984, the Commission granted an extension until April 1, 1985.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to extend the Exchange's allocation and evaluation pilot program to September 30, 1985 to enable it to study alternative rule proposals regarding these topics.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it will facilitate transactions in securities and promote just and equitable principles of trade.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to permit the pilot procedures, already in place, to be extended.

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.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the pilot program was scheduled to terminate on April 1, 1985. The Commission believes that it is appropriate to extend the Exchange's allocation and evaluation pilot program while the Phlx continues to evaluate its procedures and consider alternative proposals prior to requesting permanent approval of its rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted July 29, 1985.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16177 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* Securities Exchange Act Release No. 21460, (November 2, 1984); 49 FR 44969, (November 13, 1984).

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended June 28, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a Show-Cause Order, a Tentative Order, or in appropriate cases a Final Order without further proceedings.

Date filed	Docket No.	Description
June 28, 1985	43225	Best Airlines, Inc., c/o William L. Howard, Suite 1200, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. Application of Best Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail as follows: Between the co-terminals, Hartford, CT, and Philadelphia, PA and the terminal, Nassau, Bahamas. Conforming Applications, Motions to Modify Scope and Answers may be filed by July 26, 1985.
June 28, 1985	43184	Atlantic Gulf Airlines, c/o Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Ave., NW., Washington, D.C. 20007. Additional Information filed with respect to the application of Atlantic Gulf Airlines for foreign air transportation. Answers may be filed by July 26, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-16159 Filed 7-5-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB May 30, 1985 to June 19, 1985

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period May 30, 1985—June 19, 1985 to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

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, DC 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

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 them, 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 May 30, 1985 to June 19, 1985:

DOT No: 2580
OMB No: New
By: United States Coast Guard
Title: Vessel Reporting Requirements
Form: None
Frequency: On occasion
Respondents: The person in charge of a vessel regulated under Title 46 CFR.

Need/Use: These reports are needed to increase the likelihood of timely assistance being available to vessels in distress, especially those that cannot communicate their destress to the vessel's owner or others in a position to help. The information will be used by Coast Guard to determine if the vessel reported is in distress, and if so, take action to provide needed assistance.

DOT No: 2581
OMB No: New
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard
Forms: None
Frequency: Once per car
Respondents: Manufacturers of new cars and replacement parts.

Need/Use: Manufacturers of certain passenger motor vehicles are required to mark major component parts of high theft lines with the Vehicle Identification Number (VIN) or derivative thereof. Manufacturers of certain replacement major parts must mark these parts with the letter "R".

DOT No: 2582
OMB No: 2133-0018
By: Maritime Administration
Title: 46 CFR Part 298—Title XI Obligation Guarantees
Forms: MA-163 and Attachments
Frequency: On Occassion
Respondents: Ship Owners and Ship Operators.

Need/Use: Applicants for assistance must provide additional information for MARAD evaluation of their proposed projects.

DOT No: 2583
OMB No: UPWP (2132-0031) TIP (2132-0529)
By: Urban Mass Transportation Administration
Title: Unified Planning Work Program and the Transportation Plan and Transportation Improvement Program
Forms: None
Frequency: Annually/Biennially
Respondents: State, local governments and Metropolitan Planning Organization (MPO)

Need/Use: UPWP describes transportation planning activities to be funded during the next two year period using Federal Highway Administration and Urban Mass Transportation Administration planning funds. This information is used for the grant review and approval process. TIP/AE and Transportation Plan is used by State and MPO's as the basis for making investment decisions and as a management tool regarding the use of Federal and Non-Federal capital funds.

DOT No: 2584
OMB No: 2106-0041
By: Civil Aereonuatics Board (OST/P-40)
Title: Part 204—Data to Support Fitness Determinations
Forms: None
Frequency: On occasion
Respondents: Air Carriers

Need/Use: This information sets forth the fitness data that must be submitted by applicants for certificate authority, including those proposing a substantial change in operations; and by commuter carriers, including those providing or proposing to provide Essential Air Service.

DOT No: 2585
OMB No: 2125-0025
By: Federal Highway Administration
Title: Highway Safety Improvement Program and Priorities
Forms: None
Frequency: Recordkeeping/Annually
Respondents: State highway agencies

Need/Use: For the Federal Highway Administration to evaluate its overall highway safety improvement program, and to determine the use of Federal-aid funds for projects proposed by States, and to comply with Congressional reporting requirements.

DOT No: 2586

OMB No: 2125-0010
By: Federal Highway Administration
Title: Bid Price Data
Forms: PR-45
Frequency: On occasion
Respondents: State Highway Agencies

Need/Use: For FHWA to monitor changes in purchasing power of the Federal-aid highway construction dollar, so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified.

DOT No: 2587
OMB No: 2127-0501
By: National Highway Traffic Safety Administration
Title: Incentive Grants Criteria for Alcohol Traffic Safety Program
Forms: None
Frequency: Annually
Respondents: States

Need/Use: Alcohol Incentive Grant Program is amended to include (1) projects to combat drugged driving as one criteria a state can use to qualify for an incentive grant, (2) encouraging States to enact laws specifying minimum sentencing standards for persons of drunk driving by establishing an additional grant.

DOT No: 2588
OMB No: 2120-0082
By: Federal Aviation Administration
Title: Compliance Plan—FAR Part 91, Subpart E
Forms: None
Frequency: Annually
Respondents: Operators of aircraft operated under FAR Parts 91, 121, 123, 125, covered by Subpart E

Need/Use: The Federal Aviation Act of 1958. Section 611 authorizes the issuance of regulations to control aircraft noise. 14 CFR 91 publishes requirements for noise abatement. Information collected shows air carrier noise compliance plans and statutes.

DOT No: 2589
OMB No: 2130-0505
By: Federal Railroad Administration
Title: Steam Locomotive Inspection
Forms: None
Frequency: Recordkeeping, on occasion, monthly and annually
Respondents: Railroads

Need/Use: Inspections are required for steam locomotives to detect defects and assure compliance with the Locomotive Inspection Act.

Issued in Washington, DC, on July 1, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85-16160 Filed 7-5-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on July 30 and July 31, 1985 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 30 and the preparation of a written report to the Secretary of the Treasury on July 31, 1985.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552(b)(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: July 2, 1985.

John J. Niehenke,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 85-16196 Filed 7-5-85 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, enacted October 6, 1972, 5 U.S.C. App. I) the Secretary of the Treasury has approved continuation of the following industry committee as an advisory committee:

Title: (1) Government and Federal Agencies Securities Committee of the Public Securities Association.

Purpose: The committee is utilized by the Secretary of the Treasury and his staff for advice in carrying out Federal financing and public debt management. It considers commercial and financial information, advises the Secretary of the Treasury and his staff and makes reports and recommendations.

Statement of Public Interest: The membership of this committee represents a cross section of the financial community. The members are intimately acquainted with commercial and financial information and day-to-day market factors relevant to Treasury debt management operations. It is in the public interest to insure that the Secretary of the Treasury and his staff have this supplemental information in order to manage the public debt.

Authority for this committee will expire on June 11, 1987.

Dated: July 2, 1985.

John J. Niehenke,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 85-16197 Filed 7-5-85; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 85-111]

Treatment of Interest Charges in the Customs Value of Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Customs position.

SUMMARY: This document serves as notice to the general public that Customs is changing its position regarding the treatment of interest charges in the customs value of imported goods. A recent decision by the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) indicates that interest charges included in the price actually paid or payable for imported merchandise are not to be considered as part of the customs value where: (1) The interest charges are identified separately from the price of the goods; (2) the financing arrangement was in writing; and (3) where required, the buyer can demonstrate that the goods undergoing appraisement are actually sold at the price declared, and the claimed rate of interest does not exceed the level for such transaction prevailing in the country where and when the financing was provided. In view of this decision, Customs has reconsidered its prior administrative decisions regarding the dutiability of interest payments, and has determined that under the Trade Agreements Act of 1979 (Pub. L. 96-36) most interest payments are not part of the dutiable value of merchandise provided certain criteria are met.

EFFECTIVE DATE: This decision is retroactive to April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce N. Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) adopted a decision regarding the treatment of interest charges in the customs value of imported goods (reprinted below as Annex A). The decision indicates that interest charges included in the price actually paid or payable for imported merchandise are not to be considered as part of the customs value interest where:

A. The interest charges are identified separately from the price actually paid or payable for the goods;

B. The financing arrangement in question was made in writing;

C. Where required by Customs, the buyer can demonstrate that

—The goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transaction prevailing in the country where and when the financing was provided.

Prior to the adopton of the above decision, in various administrative determinations the U.S. Customs Service had taken the position that only those interest payments which were part of an "overall financing arrangement," or those which were paid by a buyer to a third party unrelated to a seller and which did not accrue to the seller's benefit, were not dutiable. All other interest payments associated with imported goods, including those paid to a seller and relating to the purchase of specific goods, were considered dutiable.

In view of the GATT decision, the Customs Service decided to reconsider its position regarding the dutiability of interest payments. Our reevaluation resulted in a determination that whether or not interest payments are included in the price actually paid or payable for merchandise, they should be considered nondutiable provided that criteria based on the GATT decision were met. Accordingly, Customs personnel were informed on April 25, 1985, through the issuance of the memorandum reprinted below, that our position regarding the dutiability of interest payments had been changed.

On April 26, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) adopted a decision regarding the treatment of interest charges in the customs value of imported goods. This Committee administers the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the GATT Valuation Agreement), to which the United State is a signatory, and which was enacted into domestic legislation in the Trade Agreements Act of 1979 (Pub. L. 96-36) (the TAA). In view of the above decision, Customs Service Headquarters has reassessed its position previously taken in TAA rulings 14, 31 and 43 with respect to the dutiability of interest charges. In brief, our previous rulings held that only those interest payments which were part of an "overall financing arrangement" (TAA 43), or those which were paid by a buyer to a third party unrelated to a seller and which did not accrue to the seller's benefit (TAA 31) were not dutiable. All other interest payments associated with imported goods, including those paid to a seller and relating to the purchase of specific goods (TAA 14 and 31) were considered dutiable.

Our experience under the above rulings indicated that it was impossible in many instances to distinguish interest payments relating to the purchase of specific goods from interest payments made as a part of an overall financing arrangement. More importantly however, we have reevaluated our prior determinations interpreting the TAA regarding the dutiability of interest payments, and have concluded that interest payments, whether or not included in the price actually paid or payable for merchandise, should not be considered part of dutiable value provided the following criteria are satisfied:

A. The interest charges are identified separately from the price actually paid or payable for the goods;

B. The financing arrangement in question was made in writing;

C. Where required by Customs, the buyer can demonstrate that

—The goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transaction prevailing in the country where, and at the time, when the financing was provided.

Inquiries regarding the criteria in "C" shall be considered satisfied, *inter alia*, if the claimed charges for interest and principal are consistent with those usually reflected in sales of identical or similar merchandise. If the claimed amount of interest is inconsistent with that usually reflected in sales of identical or similar merchandise, or is inconsistent when compared to the level for such transaction prevailing in the country where, and at the time when the financing was provided, only that amount which is consistent shall be allowed as non-dutiable, the excess being disallowed.

This decision also applies to entries of merchandise appraised under a method other than transaction value. Additionally, this decision shall apply to all entries under Customs jurisdiction on which liquidation has not become final, including currently unliquidated entries and protested entries which have not been finally disposed of.

Pursuant to the above memorandum issued to its field personnel on April 25, 1985, Customs will now consider interest payments satisfying the criteria in the

memorandum not to be part of the customs value of imported merchandise.

Annex A—General Agreement on Tariffs and Trade; Committee on Customs Valuation; Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods

Adopted by the Committee on April 26, 1984

The Parties to the Agreement on Implementation of Article VII of the GATT agree as follows:

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

(a) The charges are distinguished from the price actually paid or payable for the goods;

(b) The financing arrangement was made in writing;

(c) Where required, the buyer can demonstrate that

—Such goods are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

Each party shall notify the Committee of the date from which it will apply the Decision.

Robert P. Schaffer,

Acting Commissioner of Customs.

Approved June 20, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16139 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of Application Packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1986 Tax Counseling for the Elderly program.

DATES: Application packages are available from IRS at this time. The deadline for submitting an application package to the IRS for the 1986 Tax Counseling for the Elderly program is August 8, 1985.

ADDRESS: Application Packages may be requested by contracting: Internal Revenue Service, Tax Counseling for the Elderly Program, Taxpayer Service Division D:R:T:I, Room 7217, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Johnell Hunter of the Taxpayer Service Division, Internal Revenue Service, 1111 Constitution Ave., N.W., Room 7215, Washington, DC 20224, (202) 566-4904, not a toll-free call.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly program is contained in section 163 of the Revenue Act of 1978 (92 Stat. 2810). Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Applications are being solicited before the FY 1986 budget has been approved and, therefore, cooperative agreements will be entered into subject to funds being appropriated. Subject to funding, volunteers may receive reimbursement for expenses incurred in training and in providing tax return assistance, and sponsoring agencies and organizations may receive reimbursement for administrative expenses. The Tax Counseling for the Elderly program is referenced in the Catelog of Federal Domestic Assistance in Section 21.006.

Walter M. Alt,

Director, Taxpayer Service Division.

[FR Doc. 85-16028 Filed 7-5-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Communications Commission	2
Federal Maritime Commission	3
Federal Trade Commission	4, 5
Securities and Exchange Commission	6
Uniformed Services University of the Health Sciences	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, July 15, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

Closed

1. Litigation Authorization, GC Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: July 3, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued July 3, 1985.

[FR Doc. 85-16299 Filed 7-3-85; 3:05 pm]

BILLING CODE 6750-06-M

2

FEDERAL COMMUNICATIONS COMMISSION

July 5, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 12, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Tariff F.C.C. No. 270, 1.544 Mpbs Channels for connection with interstate communications systems. Summary: The Commission will consider applications for review of a decision by the Common Carrier Bureau that intraexchange private line channels used for both interstate and intrastate communications must be furnished under an F.C.C. tariff.

Common Carrier—2—Title: In the Matter of International Communication Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes. Summary: The Commission will consider comments filed in response to its Notice of Inquiry in this proceeding.

Mass Media—1—Title: Amendment of Part 73 of the Commission's Rules Regarding Network Affiliation Contracts (Docket No. 85-5). Summary: The Commission will consider a *Report and Order* which would eliminate the filing of network affiliation contracts with the Commission for radio licensees, but retain the requirement for television licensees that affiliate with national networks.

Mass Media—2—Title: Amendment of AM Technical Rules; Docket No. 84-752. Summary: The Commission will consider a Further Notice of Proposed Rule Making in Docket No. 84-752 inviting comments on rule amendments that would increase the power of Class IV AM stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, eliminate the distinctions between Class III-A and Class III-B AM stations, and prescribe the method for using Figure 1a of Section 73.190(r) of the rules to calculate the field strength of skywave signals within 100 km of the transmitter.

Mass Media—3—Title: Request of Four-O, Inc., permittee of UHF Station WXXV-TV, Gulfport, Mississippi, to delete the condition, imposed upon the grant of its application for a construction permit, requiring a principal of the permittee to divest himself of his interests in radio stations licensed to that community. Summary: The Commission will consider the request of Four-O, Inc., to delete a divestiture condition imposed on the grant of its application for a construction permit in order to ensure compliance with the Commission's multiple ownership rules. The request is made pursuant to Note 4 of Section 73.3555 of the Commission's Rules, which permits applications for UHF stations to be considered on a case-by-case basis to determine whether common ownership of radio/television combinations in the same market would be in the public interest.

Mass Media—4—Title: "Application for Review" and "Motion for Stay" (CSR-2326) filed January 22, 1985, by Miami Cablevision. "Petition for Reconsideration" (CSR-2529) filed January 18, 1985, by the Cities of Grandview and Sunnyside, Washington. "Petition for Reconsideration" (CSR-2567) filed January 28, 1985, by the City of Atchison, Kansas. "Application for Review" (CSR-2684) filed January 22, 1985, by the Connecticut Cable Television Association, Inc. "Petition for Declaratory Ruling" (CSR-2801) filed December 28, 1984, by Media General Cable of Fairfax, Inc. Summary: The referenced special relief petitions seek Commission review and/or interpretation of the action taken by the Chief, Video Services Division, Mass Media Bureau, pursuant to delegated authority, in *City of Southfield, Michigan, et al.* (Mimeo No. 1442), released December 19, 1984, which dismissed as moot all those petitions pending before the Commission which dealt with franchise fee issues.

Mass Media—5—Title: News distortion and personal attack complaint filed by the American Legal Foundation. Summary: The Commission will consider whether CBS Inc., during the "Pentagon/Underground" segment of the series, "Our Times with Bill Moyers," distorted its presentation concerning the combat suitability of two major weapon systems. In addition, the Commission will examine the complainant's personal attack allegations concerning the Pentagon's program managers.

Mass Media—6—Title: News distortion, Fairness Doctrine and Personal Attack Complaints of Central Intelligence Agency and American Legal Foundation and Petition for Declaratory Ruling of American Civil Liberties Union. Summary: The Commission will consider Bureau's January 10, 1985 ruling that ABC had not violated Fairness Doctrine, personal attack rule or news distortion policy in connection with 1984 segments of "ABC World News Tonight". The Commission will also consider whether government agencies have standing to file complaints in these areas.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: July 5, 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16273 Filed 7-3-85; 3:13 pm]

BILLING CODE 6712-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—July 10, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Docket No. 85-8: In the Matter of the Independent Action Provisions of the Atlantic and Gulf/West Coast of South America Conference Agreement—Consideration of replies submitted in response to Notice of Filing of Petition.
2. Fact Finding Investigation No. 13: Military Household Goods Rates on Vessel Operating Common Carriers—Consideration of Report and Recommendations of Investigative Officer.
3. Docket No. 83-41: Wilmington Stevedores, Inc., v. Port of Wilmington, Delaware—Consideration of exceptions and replies to exceptions relative to the Administrative Law Judges' initial decision.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc 85-16271 Filed 7-3-85; 3:06 pm]

BILLING CODE 6730-01-M

4

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, July 8, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Discussion of Proposed Streamlining Procedures in Pre-Appeal Stages of Commission Adjudications.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523-1892, Recorded Message: (202) 523-3806.

Emily H. Rock,

Secretary.

[FR Doc. 85-16216 Filed 7-3-85; 10:49 am]

BILLING CODE 6750-01-M

5

FEDERAL TRADE COMMISSION

TIME AND DATES: 10:00 a.m., Monday, July 8, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of proposed changes to the Commission's Rules of Practice to encourage negotiated resolutions of discovery disputes, including changes to Rules 2.7(d)(4), 3.22(f), 3.34, and 3.37, 16 CFR 2.7(d)(4), 3.22(f), 3.34, and 3.37 (1985).

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523-1892, Recorded Message: (202) 523-3806.

Emily H. Rock,

Secretary.

[FR Doc. 85-16217 Filed 7-3-85; 10:49 am]

BILLING CODE 6750-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities Exchange Commission will hold the following meetings during the week of July 8, 1985.

An open meeting will be held on Wednesday, July 10, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, July 10, 1985, at 2:30 p.m., will be:

1. Consideration of whether to order an evidentiary hearing on an application filed by Narragansett Catpital Corporation, a venture capital company registered under the Investment Company Act of 1940 ("Act") as a closed-end, management investment company, its senior management, and certain entities affiliated with those parties. The application requests an order of the Commission granting certain exemptions from the Act to permit the senior management to take over Narragansett in a leveraged buyout that ultimately would result in a privately-held firm not subject to the Act. For further information, contact Glen Payne at (202) 272-3018.
2. Consideration of whether to amend Rule 6e-3(T) under the Investment Company Act of 1940. The amendments would revise conditions under which insurance company separate accounts issuing flexible premium variable life insurance are permitted to charge for incidental insurance and coverage substandard underwriting risks. The amendments also alter the treatment of these charges under the sales load provisions of the rule. For further information, contact Robert E. Plaze at (202) 272-2622
3. Consideration of whether to adopt Rule 203(b) (3)-1 under the Investment Advisers Act of 1940 which would specify certain situations in which a limited partnership, rather than each of its limited partners, would be counted as a "client" of a general partner acting as investment adviser to the partnership for purposes of an exemption from registration provided by the Act. For further information, please contact Thomas S. Harman at (202) 272-2030.
4. Consideration of whether to propose for public comment an amendment to Rule 6-07 of Regulation S-X which would require registered open end management investment companies to account for net costs incurred as a result of a 12b-1 plan as expenses. For further information, please contact Forrest R. Foss at (202) 272-7318.

The subject matter of the closed meeting scheduled for Wednesday, July 10, 1985, following the 2:30 p.m. open meeting, will be:

Settlement of injunctive actions.
Access to investigative files by Federal, State, or Self-Regulatory authorities
Institution of injunctive action.
Formal orders of investigation.
Administrative proceeding of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.
Opinion.

At times changes in commission priorities require alterations in the scheduling of meeting items. Fore further information and to ascertain what, if any, matters have been added; deleted or postponed, please contact: David Martin at (202) 272-2179.

John Wheeler,

Secretary.

July 3, 1985.

[FR Doc. 85-16240 Filed 7-3-85; 1:13 pm]

BILLING CODE 8010-01-M

7

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 8:00 a.m., 15 July 1985.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" [5 U.S.C. 552b(e)(3)].

MATTERS TO BE CONSIDERED:

8:00—Meeting—Board of Regents

(1) Approval of Minutes—15 April 1985
(2) Faculty Appointments
(3) Report—Admissions
(4) Report—Associate Dean for Operations:
  (a) Budget
  (b) Briefing: Medical Aspects of Advanced Laser Technology
(5) Report—President, USUHS:
  (a) University Awards
  (b) Faculty Compensation
  (c) F. Edward Hebert School of Medicine—Agreements for Reciprocal Exchange Programs
  (d) Graduate Education—Certification of Graduate Students
  (e) Continuing Education
  (f) Informational Items
  (g) Briefing on University Research Program
(6) Comments: Members, Board of Regents
(7) Comments: Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: October 21, 1985.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3049..

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1985.

[FR Doc. 85-16286 Filed 7-3-85; 3:44 pm]

BILLING CODE 3810-01-M

federal register

Monday
July 8, 1985

Part II

Environmental Protection Agency

40 CFR Part 51

Stack Height Regulation; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-2847-6]

Stack Height Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Section 123 of the Clean Air Act, as amended, requires EPA to promulgate regulations to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State implementation plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice (GEP) or by any other dispersion technique. A regulation implementing section 123 was promulgated on February 8, 1982, at 47 FR 5864. Revisions to the regulation were proposed on November 9, 1984, at 49 FR 44878. Today's action incorporates changes to the proposal and adopts this regulation in final form.

EFFECTIVE DATE: This regulation becomes effective on August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, MD-15, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina 27711. Telephone (919) 541-5540.

SUPPLEMENTARY INFORMATION:

Docket Statement

Pertinent information concerning this regulation is included in Docket Number A-83-49. The docket is open for public inspection between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA Central Docket Section, West Tower Lobby, Gallery One, 401 M Street, SW., Washington, D.C. Background documents normally available to the public, such as **Federal Register** notices and Congressional reports, are not included in the docket. A reasonable fee may be charged for copying documents.

Background

Statute

Section 123, which was added to the Clean Air Act by the 1977 Amendments, regulates the manner in which techniques for disperson of pollutants from a source may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by that portion of a stack which exceeds GEP or by "any other dispersion technique." It defines GEP, with respect to stack heights as:

> the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies or wakes which may be created by the source itself, nearby structures or nearby terrain obstacles . . . [Section 123(c)].

Section 123 further provides that GEP stack height shall not exceed two and one-half times the height of the source (2.5H) unless a demonstration is performed showing that a higher stack is needed to avoid "excessive concentrations." As the legislative history of section 123 makes clear, this reference to a two and one-half times test reflects the established practice of using a formula for determining the GEP stack height needed to avoid excessive downwash. Finally, section 123 provides that the Administrator shall regulate only stack height credits—that is, the portion of the stack height used in calculating an emission limitation—rather than actual stack heights.

With respect to "other dispersion techniques" for which emission limitation credit is restricted, the statute is less specific. It states only that the term shall include intermittent and supplemental control systems (ICS, SCS), but otherwise leaves the definition of that term to the discretion of the Administrator.

Thus the statute delegates to the Administrator the responsibility for defining key phrases, including "excessive concentrations" and "nearby," with respect to both structures and terrain obstacles, and "other dispersion techniques." The Administrator must also define the requirements of an adequate demonstration justifying stack height credits in excess of the 2.5H formula.

Rulemaking and Litigation

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques. Information concerning the development of the regulation was included in Docket Number A-79-01 and is available for inspection at the EPA Central Docket Section. This regulation was challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc.; the Natural Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulation, reversing certain portions and upholding other portions. Further discussion of the court decision is provided later in this notice.

Administrative Proceedings Subsequent to the Court Decision

On December 19, 1983, EPA held a public meeting to take comments to assist the Agency in implementing the mandate of the court. This meeting was announced in the **Federal Register** on December 8, 1983, at 48 FR 54999. Comments received by EPA are included in Docket Number A-83-49. On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. While the petition was pending before the court, the mandate from the U.S. Court of Appeals was stayed. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within 6 months. The promulgation deadline was ultimately extended to June 27, 1985, in order to provide additional opportunities for public comment, to allow EPA to hold a public hearing on January 8, 1985, and to provide additional time for EPA to complete its analysis of rulemaking alternatives.

Documents

In conjunction with the 1982 regulation and this revision, EPA developed several technical and guidance documents. These served as background information for the regulation, and are included in Dockets A-79-01 and A-83-49. The following documents have been or will be placed in the National Technical Information Service (NTIS) system and may be obtained by contacting NTIS at 5285 Port Royal Road, Springfield, Virginia 22161.

(1) "Guideline for Use of Fluid Modeling to Determine Good Engineering Stack Height," July 1981, EPA, Office of Air Quality Planning and Standards, EPA-450/4-81-003 (NTIS PB82 145327).

(2) "Guideline for Fluid Modeling of Atmospheric Diffusion," April 1981, EPA, Environmental Sciences Research Laboratory, EPA-600/8-81-009 (NTIS PB81 201410).

(3) "Guidance for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulation)," June 1985, EPA, Office of Air Quality Planning and Standards, EPA-450/4-80-023R.

(4) "Determination of Good Engineering Practice Stack Height—A

Fluid Model Demonstration Study for a Power Plant," April 1983, EPA, Environmental Sciences Research Laboratory, EPA-600/3-83-024 (NTIS PB83 207407).

(5) "Fluid Modeling Demonstration of Good-Engineering-Practice Stack Height in Complex Terrain," April 1985, EPA Atmospheric Sciences Research Laboratory, EPA/600/3-85/022 (NTIS PB85 203107).

In addition, the following documents are available in Docket A-83-49.

"Economic Impact Assessment for Revisions to the EPA Stack Height Regulation," June 1985.

"Effect of Terrain-Induced Downwash on Determination of Good-Enginering-Practice Stack Height," July 1984.

Program Overview

General

The problem of air pollution can be approached in either of two ways: through reliance on a technology-based program that mandates specific control requirements (either control equipment or control efficiencies) irrespective of ambient pollutant concentrations, or through an air quality based system that relies on ambient air quality levels to determine the allowable rates of emissions. The Clean Air Act incorporates both approaches, but the SIP program under section 110 uses an air quality-based approach to establish emission limitations for sources. Implicitly, this approach acknowledges and is based on the normal dispersion of pollutants from their points of origin into the atmosphere prior to measurements of ambient concentrations at ground level.

There are two general methods for preventing violations of the national ambient air quality standards (NAAQS) and prevention of significant deterioration (PSD) increments. Continuous emission controls reduce on a continuous basis the quantity, rate, or concentrations of pollutants released into the atmosphere from a source. In contrast, dispersion techniques rely on the dispersive effects of the atmosphere to carry pollutant emissions away from the source in order to prevent high concentrations of pollutants near the source. Section 123 of the Clean Air Act limits the use of dispersion techniques by pollution sources to meet the NAAQS or PSD increments.

Tall stacks, manipulation of exhaust gas parameters, and varying the rate of emissions based on atmospheric conditions (ICS and SCS) are the basic types of dispersion techniques. Tall stacks enhance dispersion by releasing pollutants into the air at elevations high above ground level, thereby providing greater mixing of pollutants into the atmosphere. The result is to dilute the pollutant levels and reduce the concentrations of the pollutant at ground level, without reducing the total amount of pollution released. Manipulation of exhaust gas parameters increases the plume rise from the source to achieve similar results. ICS and SCS vary a source's rate of emissions to take advantage of meteorologic conditions. When conditions favor rapid dispersion, the source emits pollutants at higher rates, and when conditions are adverse, emission rates are reduced. Use of dispersion techniques in lieu of constant emission controls results in additional atmospheric loadings of pollutants and can increase the possibility that pollution will travel long distances before reaching the ground.

Although overreliance on dispersion techniques may produce adverse effects, some use of the dispersive properties of the atmosphere has long been an important factor in air pollution control. For example, some stack height is needed to prevent excessive pollutant concentrations near a source. When wind meets an obstacle such as a hill or a building, a turbulent region of downwash, wakes, and eddies is created downwind of the obstacle as the wind passes over and around it. This can force a plume rapidly to the ground, resulting in excessive concentrations of pollutants near the source. As discussed previously, section 123 recognizes these phenomena and responds by allowing calculation of emission limitations with explicit consideration of that portion of a source's stack that is needed to ensure that excessive concentrations due to downwash will not be created near the source. This height is called GEP stack height.

Summary of the Court Decision

Petitions for review of EPA's 1982 regulation were filed in the D.C. Circuit within the statutory time period following promulgation of the regulation. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulation, reversing certain portions and upholding others, The following is a summary of the court decision.

The EPA's 1982 rule provided three ways to determine GEP stack height. One way was to calculate the height by using a formula based on the dimensions of nearby structures. The other two were a *de minimis* height of 65 meters, and the height determined by a fluid modeling demonstration or field study. The court endorsed the formula as a starting point to determine GEP height. However, it held that EPA has not demonstrated that the formula was an accurate predictor of the stack height needed to avoid "excessive concentrations of pollutants due to downwash. Accordingly, the court directed EPA to re-examine in three ways the conditions under which exceptions to the general rule of formula reliance could be justified.

First, the 1982 rule allowed a source to justify raising its stack above formula height by showing a 40-percent increase in concentrations due to downwash, wakes, or eddies, on the ground that this was the percentage increase that the formula avoided. The court found this justification insufficient, and remanded the definition to EPA with instructions to make it directly responsive to health and welfare considerations.

Similarly, the 1982 rule allowed a source that built a stack to less than formula height to raise it to formula height automatically. Once again, the court required more justification that such a step was needed to avoid adverse health or welfare effects.

Finally, the court directed EPA either to allow the authorities administering the stack height regulations to require modeling by sources in other cases as a check on possible error in the formula, or explain why the accuracy of the formula made such a step unnecessary.

The 1982 rule provided two formulae to calculate GEP stack height. For sources constructed on or before January 12, 1979, the date of initial proposal of the stack height regulations, the applicable formula was 2.5 times the height of the source or other nearby structure. For sources constructed after that date, the rule specified a newer, refined formula, the height of the source or other nearby structure plus 1.5 times the height or width of that structure, whichever is less ($H+1.5L$). The EPA based its decision to include two formulae on the unfairness of applying the new formula retroactively. In its examination of this issue, the court specified four factors that influence whether an agency has a duty to apply a rule retroactively. They are:

1. Whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law,
2. The extent to which the party against whom the new rule is applied relied on the former rule,
3. The degree of burden which a retroactive order imposes on a party, and
4. The statutory interest in applying a new rule despite the reliance of a party on the old standard.

719 F.2d at 467 (citations omitted). Applying this analysis to the two formulae, the court upheld EPA's basic decision.

However, the court also held that sources constructed on or before January 12, 1979, should not be automatically entitled to full credit calculated under the 2.5H formula unless they could demonstrate reliance on that formula. The court remanded this provision for revision to take actual reliance on the 2.5H formula into account.

The statute limits stack height credit to that needed to avoid excessive concentrations due to downwash caused by "nearby" structures or terrain features. The 1982 regulation defined "nearby" for GEP formula applications as five times the lesser of either the height or projected width of the structure causing downwash, not to exceed one-half mile. No such distance limitation was placed on structures or terrain features whose effects were being considered in fluid modeling demonstrations or field studies. The court held that section 123 explicitly applies the "nearby" limitation to demonstrations and studies as well as formula applications, and remanded the rule to EPA to apply the limitation in both contexts.

The 1982 rule defined "dispersion techniques" as those techniques which attempt to affect pollutant concentrations by using that portion of a stack exceeding GEP, by varying emission rates according to atmospheric conditions or pollutant concentrations, or by the addition of a fan or reheater to obtain a less stringent emission limitation. The court found this definition too narrow because any technique "significantly motivated by an intent to gain emissions credit for greater dispersion" should be barred. 719 F.2d 462. As a result, the court directed EPA to develop rules disallowing credit for all such dispersion techniques unless the Agency adequately justified exceptions on the basis of administrative necessity or a *de minimis* result.

The GEP formulae established in the 1982 rule do not consider plume rise, on the ground that plume rise is not significant under downwash conditions. In its review of this provision, the court affirmed this judgment by EPA.

The 1982 rule addressed pollutant concentrations estimated to occur when a plume impacts elevated terrain by allowing credit for stack height necessary to avoid air quality violations in such cases. However, the court ruled that section 123 did not allow EPA to grant credit for plume impaction in setting emission limits, and reversed this part of the regulation.

The preamble to the 1982 regulation provided a 22 month process for State implementation of the regulation. The court found this period to be contrary to section 406(d)(2) of the Clean Air Act and reversed it.

The regulation, following the statute, excluded stacks "in existence" on or before December 31, 1970, from the GEP requirements. However, the regulation did not prohibit sources constructed after December 31, 1970, from receiving credit for tying into pre-1971 stacks. Although the court upheld EPA's definition of "in existence," it noted that EPA had failed to address the tie-in issue. Accordingly, the court remanded this issue to EPA for justification.

One other provision of the regulation was challenged in the *Sierra Club* suit: The exclusion of flares from the definition of "stack." In its review of this provision, the court held that EPA had acted properly.

Other provisions of the stack height regulation, such as the *de minimis* stack height established under § 51.1(ii)(1), were not challenged in the suit and thus remain in effect.

Summary of the November 9, 1984, Notice of Proposed Rulemaking

In the November 9, 1984, notice responding to the court decision, EPA proposed to redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and proposed to modify some of the bases for determining GEP stack height. The following is a summary of the revisions that were proposed.

Excessive Concentrations

The Court of Appeals held that EPA erred in defining "excessive concentrations" due to downwash, for purposes of justifying a stack greater than formula height, as nothing more than a 40-percent increase in pollutant concentrations over what would occur in the absence of downwash. It remanded this issue to EPA to relate the definition to some absolute level of air pollution that could be interpreted to endanger health and welfare, and thus to be "excessive."

The EPA proposed two alternative approaches to defining "excessive concentrations." First, EPA requested comment on whether the 40-percent approach adopted as part of the 1982 regulation in fact protects against the dangers to health and welfare envisioned by Congress when it enacted section 123. In the event that such a showing could not be made, EPA proposed a two-part definition of excessive concentrations, requiring that the downwash, wakes, or eddies induced by nearby structures or terrain features result in increases in ground-level pollutant concentrations that:

(a) Cause or contribute to an exceedance of a NAAQS or applicable PSD increment, and

(b) Are at least 40 percent in excess of concentrations projected to occur in the absence of such structures or terrain features.

Definition of GEP Stack Height

EPA proposed to find that the traditional (2.5H) and refined (H+1.5L) formulae remained proper methods for calculating GEP stack height except EPA proposed to revise its regulation to allow EPA, the State or local air pollution control agency discretion to require a further demonstration using a field study or fluid model to demonstrate GEP stack height for a source in a case where it was believed that the formula may not reliably predict GEP height. In the case of structures that are porous or aerodynamically smoother than block-shaped structures, it would require a source to demonstrate the downwash effects of such structures using a field study or fluid model before receiving credit for stack height based on the structures. EPA also proposed generally to allow sources to raise existing stacks up to formula GEP height without further demonstrations with the exception noted above for discretionary modeling.

Reliance on the 2.5H Formula

In its 1982 rules, EPA allowed sources built before January 12, 1979, the date on which it proposed the refined H+1.5L formulae, to calculate their emission limits based on the traditional 2.5H formula that existed previously. The court approved this distinction, but ruled that it should be limited to sources that "relied" on the traditional formula, suggesting, for example, that sources that had claimed credit for stacks far taller than the formula provided could not be said to have "relied" on it.

In response to the court decision, EPA proposed to revise its regulation to require that for stacks in existence on January 12, 1979, sources demonstrate that they actually relied on the 2.5H formula in the design of their stacks before receiving credit for that height in setting their emission limitations. In the proposal, EPA requested comment on what it should consider as acceptable evidence of such reliance.

Definition of "Nearby"

In its 1982 rules, EPA allowed sources that modeled the effects of terrain obstacles on downwash to include any terrain features in their model without limiting their distance from the stack. The court, though persuaded that this was a sensible approach, since it allowed the model to best approximate reality, ruled that Congress had intended a different result, namely that terrain features beyond ½ mile from the stack should not be included in the model.

In response, EPA proposed to revise § 51.1(ii)(3) of its regulation to limit the consideration of downwash, wakes, and eddy effects of structures and terrain features to those features classified as being "nearby" as defined in § 51.1(jj). Under this proposal, structures and terrain features would be considered to be "nearby" if they occur within a distance of not more than 0.8 km (½ mile); terrain features that extend beyond 0.8 km could be considered if, at a distance of 0.8 km, they achieved a height greater than or equal to 40-percent of the GEP stack height calculated by applying the GEP formula to actual nearby structures. In other words, a terrain feature would be said to "begin" within ½ mile if it reached at least the height of nearby buildings within that distance. Such features could be considered only out to a distance equal to 10 times the maximum height of the feature, not to exceed 2 miles.

The EPA proposed two options for distinguishing between sources constructed before and after the date of promulgation of these revisions. The first option would treat both categories of sources the same. The second option would limit the consideration of terrain for new sources to only those portions of terrain features that fall *entirely* within 0.8 km, thereby removing the possibility of including features extending beyond ½ mile.

Finally, EPA proposed three alternatives for conducting fluid modeling to evaluate the downwash effects or nearby terrain features. These alternatives described various ways of limiting terrain in the model beyond the proposed distance limitations.

To establish a baseline for comparison, two alternatives would initially model the stack on a flat plane with no structure or terrain influences. To analyze downwash effects, the first approach would then insert nearby terrain, with all terrain beyond the distance limit "cut off" horizontally. The second approach would gradually smooth and slope the terrain beyond the distance limit, down to the elevation of the base of the stack.

The third approach would proceed in a somewhat different manner. A baseline would be established by modeling all terrain beyond the distance limit, smoothing and sloping nearby terrain to minimize its influence. To analyze downwash effects, the nearby terrain would then be inserted into the model and the difference in effect measured to determine appropriate downwash credit for stack height.

Definition of "Dispersion Techniques"

In the 1982 rules, EPA identified two practices, in addition to stacks above GEP and ICS/SCS, as having no purpose other than to obtain a less stringent emission limitation. In so doing, it allowed credit for any other practice that had the result of increasing dispersion. The court concluded that Congress had intended, at a minimum, to forbid any dispersion enhancement practice that was significantly motivated by an intent to obtain additional credit for greater dispersion, and remanded the question to EPA for reexamination.

The EPA proposed to revise its definition of "dispersion techniques" generally to include, in addition to ICS, SCS, and stack heights in excess of GEP, any techniques that have the effect of enhancing exhaust gas plume rise. Combining several existing stacks into one new stack can have such an effect. However, such combinations also often have independent economic and engineering justification. Accordingly, EPA requested comment on defining the circumstances under which the combining of gas streams should not be considered a dispersion technique, and proposed to allow sources to take credit in emission limitations for such merging where a facility was originally designed and constructed with merged gas streams or where the merging occurs with the installation of additional controls yielding a net reduction in total emissions of the affected pollutant. The EPA retained exclusions from its definition of prohibited dispersion techniques for smoke management in agricultural and silvicultural prescribed burning programs and also proposed to exclude episodic restrictions on residential woodburning and debris burning.

New Sources Tied into Pre-1971 Stacks

Section 123 exempts stacks "in existence" at the end of 1970 from its requirements. EPA's general approach to implementing this language was upheld by the court. However, in its 1982 rule EPA had also allowed this credit to sources built after that date that had tied into stacks built before that date. EPA failed to respond to comments objecting to this allowance, and so the court remanded the question to EPA for the agency to address.

Upon reexamination, EPA saw no convincing justification for granting credit to these sources. Consequently, for sources constructed after December 31, 1970, with emissions ducted into grandfathered stacks of greater than GEP height and for sources constructed before that date but for which major modifications or reconstruction have been carried out subsequently, EPA proposed to limit stack height credit to only so much of the actual stack height as conforms to GEP. Sources constructed prior to December 31, 1970, for which modifications are carried out that are not classified as "major" under 40 CFR 51.18(j)(i), 51.24(6)(2)(i), and 51.21(6)(2)(i) would be allowed to retain full credit for their existing stack heights.

Plume Impaction

In its 1982 rules, EPA allowed stack height credit for "plume impaction," a phenomenon that is distinct from downwash, wakes and eddies. The court, though sympathetic to EPA's policy position, reversed this judgment as beyond the scope of the statute. Accordingly, EPA proposed to delete the allowance of plume impaction credit from its regulation in compliance with the court decision. However, EPA also recognized that sources in complex terrain face additional analytical difficulties when attempting to conduct modeling to determine appropriate emission limitations. Consequently, EPA requested comment on whether any allowance should be made for implementation problems that may result from the application of revised GEP stack height assumptions and, if so, how such allowance should be made.

State Implemetation Plan Requirements

EPA's 1982 rules gave states a total of 22 months to revise their rules and to establish source emission limitations based on new stack height credits. The court found this, too, to go beyond the language of the statute. In response, EPA stated in the proposal that States would be required, pursuant to section 406(d)(2)(b) of the Clean Air Act, to review their rules and existing emission limitations, revising them as needed to comply with the new regulation within 9 months of the date of its promulgation.

Response to Public Comments on the November 9, 1984, Proposal

The EPA received over 400 comments during the public comment period and at the public hearing, addressing a number of aspects of the proposed regulation.These comments have been consolidated according to the issues raised and are discussed, along with EPA's responses, in a "Response to Comments" document included in the rulemaking docket. Certain comments can be characterized as "major" in that they address issues that are fundamental to the development of the final regulation. These comments are summarized below, along with EPA's responses. Additional discussion of the issues raised and further responses by EPA can be found in the "Response to Comments" document.

I. Maximum Control of Emissions in Lieu of Dispersion

A central legal and policy question addressed in this rulemaking was raised in the comments of the Natural Resources Defense Council (NRDC) and the Sierra Club. They contend that section 123 requires all sources to install the maximum feasible control technology before receiving any credit for the dispersive effects of a stack of any height, or for other practices that may enhance pollutant dispersion.

The NRDC argument is summarized fully in the Response to Comments document together with EPA's response. Very briefly, NRDC contends that litigation prior to the 1977 Clean Air Act Amendments had established that dispersion can never be used as an alternative to emission control, and that this understanding was carried forward and strengthened in the 1977 Clean Air Act Amendments. Accordingly, no rule that does not require full control of emissions as a prerequisite to any stack height credit would be consistent with Congressional intent.

EPA disagrees. During the 8 years between 1977 and NRDC's comments, a period covering two Administrations and three Administrators, NRDC's position has never been either adopted by EPA or seriously advocated before it. The pre-1977 cases cited by NRDC do not bar all stack credit, but only credit for stacks beyond the historical norm. Finally, the text and legislative history of section 123 contain essentially no support for NRDC's "control first" position.

II. Discussion of Other Major Issues

The EPA's position on the "control first" comments provides the necessary background against which the remaining major issues in this rulemaking are discussed. These issues are: the definition of "excessive concentrations" due to downwash, wakes, and eddies; the definition of "nearby;" and the definition of "dispersion technique." A question that affects several of these decisions, and that is addressed where it arises, concerns the extent to which any changes made in the stack heights regulations should be applied prospectively rather than retroactively.

This discussion of "excessive concentrations" is in turn divided into a discussion of the physical characteristics of downwash, followed by a discussion of the significance of those characteristics as they pertain to the GEP formulae, to stacks above formula height, to stacks being raised to formula height, and to stacks at formula height being modeled at the choice of the administering authorities.

Definition of "Excessive Concentrations"

The Physical Nature of Downwash. A number of commenters, including the Utility Air Regulatory Group (UARG), have argued that the court decision does not obligate EPA to revise the definition adopted in the 1982 regulation, but only directs EPA to ensure that the 40-percent criterion protects against concentrations due to downwash that could be related to health and welfare concerns. They point out that when emissions from a source become trapped in the wake region produced by the source itself or upwind structures and terrain features, those emissions are brought rapidly to earth, with little dilution. This, the commenters argue, can produce short-term peak concentrations at groundlevel that are many times greater that the concentration levels of the NAAQS. Because their duration is relatively short, averaging these concentrations over the times specified by the NAAQS does not result in NAAQS violations. Nonetheless, the commenters argue that these concentrations should be regarded as nuisances that section 123 was specifically enacted to avoid. Accordingly, the commenters held that EPA would be justified in retaining the 40-percent criterion without requiring that such increases result in exceedances of the NAAQS.

These same commenters argued that severe hardships would result if EPA's second proposed definition of "excessive concentrations" is adopted, and that, by limiting stack height credit to that just necessary to avoid exceedance of NAAQS or PSD increments, the definition would act to limit actual stack design and construction in a way that would increase the likelihood of NAAQS or PSD exceedances. This would occur, they argue, because, by building only so tall a stack as they can receive credit for, sources would be eliminating a "margin of safety" that would normally be provided otherwise. Furthermore, it was argued that, due to the changing nature of background air quality, inclusion of absolute concentrations such as the NAAQS or PSD increments in the definition would render determinations of GEP stack height constantly subject to change.

NRDC argued on the other hand that only a violation of air quality standards can be considered the type of "excessive concentration" for which downwash credit can be justified, the EPA had failed to specify the health or welfare significance of the short-term peaks that it might consider as meeting this description, and that in any event UARG's attempt to show that short stacks could cause a large number of short-term peaks was technically flawed in several different ways.

Response. Extensive discussion of the downwash phenomenon, as well as the aerodynamic effects of buildings and terrain features on windflow patterns and turbulence, is contained in the technical and guidance documents previously listed in this notice. To summarize briefly, numerous studies have shown that the region of turbulence created by obstacles to windflow extends to a height of approximately 2.5 times the height of the obstacle. Pollutants emitted into this region can be rapidly brought to the ground, with limited dilution. Though this tendency decreases the higher vertically within the downwash region that the plume is released, because of the highly unpredictable nature of downwash and the lack of extensive quantitative data, it is extremely difficult to reliably predict plume behavior within the downwash region. As noted in the comments submitted, the distinguishing features of downwash do not show up well over an averaging time as long as 1 hour or more. Pollutant concentrations resulting from downwash can arise and subside very quickly as meteorological conditions, including wind speed and atmospheric stability vary. This can result in short-term peaks, lasting up to 2 minutes or so, recurring intermittently for up to several hours, that significantly exceed the concentrations of the 3- and 24-hour NAAQS. Little quantitative information is available on the actual levels of these peaks, or on the frequency of their occurrence since most stacks have been

designed to avoid downwash and because downwash monitoring is not typically conducted.

A number of modeling and monitoring studies in the record assess the significance of downwash when plumes are released into the downwash region. The most important of these are a number of studies cited in the November 9 proposal showing that for sources with sulfur dioxide (SO_2) emission rates of 4 to 5 pounds per million British Thermal Units (lb./mmBTU), stacks releasing the plume into the downwash region can significantly exceed the 3-hour NAAQS.

The utility industry submitted monitoring results from four sites showing that facilities with short stacks (ranging from 23 to 89 percent of formula height) generated many short-term peaks in the vicinity of the plant at concentrations at least 2 times the highest concentration of the 3-hour SO_2 standard, i.e., 1 ppm for up to 10 minutes. Those concentrations are the maximun that could be recorded by the monitors used. There is no way to determine from these data the true peak ground-level concentrations.

The NRDC, in commenting on this subject, has argued that downwash-related concentrations are largely theoretical, since stacks have generally been built to avoid downwash, and that actual concentrations occur under other meteorological conditions such as "inversion breakup fumigations" and "looping plums," that can equal these "theoretical" concentrations predicted under downwash.[1] The NRDC also criticized the utility data on numerous technical grounds.

EPA's studies indicate that, when stacks are significantly less than GEP formula height, high short-term concentrations can indeed occur due to downwash that are in the range of the values reported by the utility industry. Concentrations produced by the other conditions cited by NRDC, though high, may be lower by an order of magnitude, and occur less frequently by as much as two orders of magnitude, than those produced by downwash.[2] As stack height approaches the height determined by the GEP formula, the expected frequency and severity of short-term peaks due to downwash becomes less certain. This is to be expected, since it is the purpose of a formula height stack to avoid excessive downwash. While it might theoretically be possible for EPA to revise the GEP formula downward (e.g., from H+1.5L to H+1.2L, or some other value), such a revision would have little purpose. By moving the release point further into the downwash region, such a change would increase the probability of high downwash-caused peaks. On the other hand, such relatively small changes in stack height are not likely to appreciably affect the emission limitation for the source. This is because emission limitations are calculated based on physical stack height and associated plume rise under atmospheric conditions judged most controling for the source. Increasing or decreasing stack height by a small fraction will not greatly change the rate or extent of dispersion and thus will not affect the ground-level concentration. Moreover, as EPA noted in its November 9 proposal, no data presently exist on which to base a revision to the formula.

The NRDC submitted data to EPA which it believed to support the conclusions that it urged EPA to adopt concerning short-term peak concentrations under other meterological conditions.[3] However, these data were not presented in a form that could be readily interpreted, and EPA has thus far been unable to draw any conclusions from them.[4]

In reviewing NRDC's comments on building downwash, EPA agrees that there is great uncertainty about our present understanding of this phenomenon, and this is supported by the range and variation of downwash effects observed in recent studies. However, no information has been presented which would convince EPA to abandon the present GEP formulae in favor of any alternative.

The health and welfare significance of downwash concentrations that result in violations of the ambient standards are documented and acknowledged in the standards themselves. The significance of short-term peaks at the levels that EPA's analyses predict is more judgmental. However, a number of studies cited in EPA's "Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information" (EPA-450/5-82-007, November 1982), indicate that concentrations of one ppm sustained for durations of 5 minutes or more can produce bronchoconstriction in asthmatics accompanied by symptoms such as wheezing and coughing. Such concentrations are well within the range of concentrations that can result from downwash. When sources meet the ambient standards, the frequency of occurrence for these concentrations under the other conditions cited by NRDC is substantially lower than for downwash when stacks are less than GEP.

GEP Formula Stack Height. Some commenters, including NRDC, stated that EPA cannot justify retention of the traditional (2.5H) and refined (H+1.5L) GEP formulae based simply on their relationship to the 40-percent criterion, and argued that the formulae provide too much credit in many or most cases. This, they argue, results in allowing sources to obtain unjustifiably lenient emission limitations.

Other commenters argued that Congress explicitly reaffirmed the traditional GEP formula, and that EPA should allow maximum reliance on it (and, by implication, on the refined formula that was subsequently derivied from it).

Response. The use of EPA's refined formula as a starting point for determining GEP was not called into question by any litigant in the *Sierra Club* case. The court's opinion likewise does not question the use of the formula as a starting point. A detailed discussion of the court's treatment of the formula, showing how it endorsed the formula's presumptive validity, is contained in the Response to Comments document.

Despite this limited endorsement, EPA might need to revisit the formula on its own if its reexamination of the "excessive concentration" and modeling issues indicated that the formula clearly and typically misstated the degree of stack height needed to avoid downwash concentrations that cause health or welfare concerns.

However, no such result has emerged from our reexamination. Stacks below formula height are associated with downwash-related violations of the air quality standards themselves where emission rates significantly exceed the levels specified by NSPS. Even where emissions are low, downwash conditions at stacks below formula height can be expected, unlike other conditions, to generate numerous short-term peaks of air pollution at high levels

[1] In "inversion breakup fumigation," an inversion layer dissipates due to heating of the ground, letting the pollutants that were trapped in it descend suddenly to ground level. In "looping plumes," a plume is brought down to the ground close to the source in the form of intermittent puffs under very unstable atmospheric conditions.

[2] "Comments on Peak Ground-Level Concentrations Due to Building Downwash Relative to Peak Concentrations Under Atmospheric Dispersion Processes," Alan H. Huber and Francis Pooler, Jr. June 10, 1985.

[3] Memorandum from David G. Hawkins, NRDC, to William F. Pedersen, Jr. Office of General Counsel, USEPA, May 29, 1985.

[4] Memorandum from Alan H. Huber, ASRL, to David Stonefield, OAQPS, June 21, 1985.

that raise a real prospect of local health or welfare impacts.

As EPA stated in the proposal, it is impossible to rely primarily on fluid modeling to implement the stack height regulations, particularly under the timetable established by the court, 49 FR 44883 (November 9, 1984). No commenter other than NRDC even suggested a different formula that in their eyes would be better, and NRDC's suggestions were premised on their "control first" position, which EPA has found inconsistent with the statute and has rejected. EPA considers the refined formula to be the state-of-the-art for determining necessary stack height.

Given the degree of presumptive validity the formula already possesses under the statute and the court opinion, we believe that this record amply supports its reaffirmation.

Stacks Above GEP Formula Height. The EPA's 1976 stack height guidelines [cite] imposed special conditions on stacks above formula height—the installation of control technology—that were not imposed on lower stacks. Similarly, EPA's 1973 proposal had made credit above formula height subject to a vaguely defined "detailed investigation" (38 FR 25700). The legislative history of the 1977 Clean Air Act Amendments cautioned that credit for stacks above formula height should be granted only in rare cases, and the Court of Appeals adopted this as one of the keystones of its opinion. The court also concluded that Congress deliberately adopted very strict requirements for sources locating in hilly terrain.

For these reasons, EPA is requiring sources seeking credit for stacks above formula height and credit for any stack height justified by terrain effects to show by field studies or fluid modeling that this height is needed to avoid a 40-percent increase in concentrations due to downwash and that such an increase would result in exceedance of air quality standards or applicable PSD increments. This will restrict stack height credit in this context to cases where the downwash avoided is at levels specified by regulation or by act of Congress as possessing health or welfare significance.

To conduct a demonstration to show that an absolute air quality concentration such as NAAQS or PSD increment will be exceeded, it is necessary to specify an emission rate for the source in question.[5] The EPA believes that in cases where greater than formula height may be needed to prevent excessive concentrations, sources should first attempt to eliminate such concentrations by reducing their emissions. For this reason EPA is requiring that the emission rate to be met by a source seeking to conduct a demonstration to justify stack height credit above the formula be equivalent to the emission rate prescribed by NSPS applicable to the industrial source category. In doing this, EPA is making the presumption that this limit can be met by all sources seeking to justify stack heights above formula height. Sources may rebut this presumption, establishing an alternative emission limitation, on a case-by-case basis, by demonstrating to the reviewing authority that the NSPS emission limitation may not feasibly be met, given the characteristics of the particular source.[6] For example, it may be possible for a source presently emitting SO_2 at a rate of 1.8 lb./mmBTU to show that meeting the NSPS rate of 1.2 lb./mmBTU would be prohibitive in that it would require scrapping existing scrubber equipment for the purpose of installing higher efficiency scrubbers. Similarly, a source may be able to show that, due to space constraints and plant configuration, it is not possible to install the necessary equipment to meet the NSPS emission rate. In the event that a source believes that downwash will continue to result in excessive concentrations when the source emission rate is consistent with NSPS requirements, additional stack height credit may be justified through fluid modeling at that emission rate.

A source, of course, always remains free to accept the emission rate that is associated with a formula height stack rather than relying on a demonstration under the conditions described here. The third alternative mentioned in the proposal—using the actual emission limit for the source—has been rejected because, to the extent that limit relied on greater than formula height, it would amount to using a tall stack to justify itself.

The EPA's reliance on exceedances, rather than violations of the NAAQS and PSD increments, is deliberate. Fluid modeling demonstrations are extremely complicated to design and carry out, even when the most simple demonstration criteria—that is, a percentage increase in concentrations, with no consideration of absolute values—are assumed. Adding consideration of an absolute concentration such as a NAAQS or PSD increment substantially complicates this effort further and introduces the scientific uncertainties associated with predicting an exceedance of a 3-hour or 24-hour standard based on 1 hour or less of modeling data. Using an hour or less of modeling values, based on one set of meteorological data, to draw the distinction between only one exceedance of the standard during the 8760 hours in a year, and the two or more that constitute a violation pushes that uncertainty beyond reasonable limits. EPA therefore does not find the additional difficulties that would be created by requiring violations instead of exceedances to be warranted. That is particularly so here, given that the regulations require sources seeking credit above the formula to be well-controlled as a condition of obtaining such credit.

Use of an absolute concentration in the test of "excessive concentrations" can lead to problems of administering the program, in that it can have a "zoning" effect. Since a source can only get stack height credit to the extent that it is needed to avoid a PSD increment or NAAQS exceedance, an emissions increase in the area of that source may increase concentrations beyond the controlling limit, thereby making it difficult for new sources to locate in the area, or for sequential construction of additional emitting units at the source in question.

This effect cannot be avoided under any test for "excessive concentrations" that is tied to absolute concentrations. However, that effect will be mitigated by the fact that the use of this approach is voluntary and limited to sources wishing to rely on fluid modeling to justify stack height credit. Moreover, the effects of downwash tend to occur very near the source, usually on fenced company property. Since concentrations measured at such locations are not used to evaluate NAAQS attainment or PSD increment consumption, new sources wishing to locate in the area are less likely to be affected.

Sources planning sequential construction of new emitting units at one location or contemplating future expansion can reduce the uncertainties noted above by initially obtaining permits for the total number of units anticipated and by planning for expansion in the calculation of necessary physical stack height. In the latter instance, only the allowable stack height credit would be revised as

[5] In contrast, if the test of "excessive concentrations" involved a simple percentage increase, there would be no need to specify an emission rate, since the increase in concentration caused by downwash is independent of emission rates.

[6] The EPA will rely on its Best Available Retrofit Technology Guideline in reviewing any rebuttals and alternative emission limitations.

expansion is carried out—not actual stack height.

An additional theoretical complication is presented when an absolute concentration is used where meteorological conditions other than downwash result in the highest predicted ground-level concentrations in the ambient air. In such cases, a source that has established GEP at a particular height, assuming a given emission rate, may predict a NAAQS violation at that stack height and emission rate under some other condition, e.g., atmospheric stability Class 'A.' Reducing the emission rate to eliminate the predicted violation would result in stack height credit greater than absolutely necessary to avoid an excessive concentration under downwash. However, reducing stack height places the source back in jeopardy of a NAAQS violation under the other meteorological condition, and so on, "ratcheting" stack height credit and emission rates lower and lower. The EPA has eliminated this "ratcheting" potential in the GEP guideline by providing that, once GEP is established for a source, adjusting the emission rate to avoid a violation under other conditions does not require recalculation of a new GEP stack height.

EPA is making this part of the regulations retroactive to December 31, 1970. In the terms of the court's retroactivity analysis, stacks greater than formula height represent a situation that Congress did affirmatively "intend to alter" in section 123. Moreover, EPA regulatory pronouncements since 1970 have placed a stricter burden on sources raising stacks above formula height than on others.

No source is precluded from building a stack height greater than formula height if such height is believed to be needed to avoid excessive downwash. However, the design and purpose of section 123 prohibit SIP credit for that effort unless a relatively rigorous showing can be made.

Given the ability of sources to avoid modeling and rely on validity of the GEP formulae and requirement for further control of emissions in conjunction with stack heights in excess of formulae height, the result predicted by UARG—exceedances of the NAAQS or PSD increments due to inadequate stack height—is highly unlikely.

The potential effect of changes in background air quality on stack height credit is not substantially different from the effect that such changes in background can have on source emission limitations in nonattainment areas. In the first case, however, sources may be able to address these effects through greater stack height if such changes affect the concentrations under downwash. Moreover, the possibility that shifting background air quality can yield different calculations of GEP is significantly limited by the fact that consideration of background in GEP calculations is restricted to those cases where credit for greater than formula height is being sought or sources are seeking to raise stacks to avoid excessive concentrations.

Raising Stacks Below Formula Height to Formula Height. In response to EPA's proposal to allow automatic credit for GEP formula height, several commenters have argued that EPA has failed to adequately respond to the court's directive to "reconsider whether, in light of its new understanding of 'excessive concentrations,' demonstrations are necessary before stack heights may be raised, even if the final height will not exceed formula height."

Response. Raising a stack below formula height to formula height is not, in EPA's judgment, subject to the same statutory reservations as building stacks greater than formula height. However, as the court has cautioned, it may still be necessary for these sources to show that raising stacks is necessary to avoid "excessive concentrations" that raise health or welfare concerns.

For these reasons, sources wishing to raise stacks subsequent to October 11, 1983, the date of the D.C. Circuit opinion, must provide evidence that additional height is necessary to avoid downwash-related concentrations raising health and welfare concerns. These rules allow sources to do this in two ways.

The first way is to rebut the presumption that the short stack was built high enough to avoid downwash problems; i.e., to show, by site-specific information such as monitoring data or citizen complaints, that the short stack had in fact caused a local nuisance and must be raised for this reason. The EPA believes that both the historical experience of the industry and the data on short-term peaks discussed earlier show that short stacks can cause local nuisances due to downwash. However, where a source has built a short stack rather than one at formula height, it has created a presumption that this is not the case. General data on short-term peaks may not be strong enough to support, by themselves and in the abstract, a conclusion that the stack must be raised to avoid local adverse effects. Instead, that proposition must be demonstrated for each particular source involved.

In the event that a source cannot make such a showing, the second way to justify raising a stack is to demonstrate by fluid modeling or field study an increase in concentrations due to downwash that is at least 40-percent in excess of concentrations in the absence of such downwash and in excess of the applicable NAAQS or PSD increments. In making this demonstration, the emission rate in existence before the stack is raised must be used.

Since raising stacks to formula height is not subject to the same extraordinary reservations expressed by Congress and the court with respect to stacks being raised above formula height, EPA does not believe that the use of presumptive "well-controlled" emission rate is appropriate here. As discussed in EPA's response to NRDC's "control first" argument, the basic purpose of section 123 was to take sources as it found them and, based on those circumstances, to assure that they did not avoid control requirements through additional dispersion. Use of a source's actual emission rate in this instance is consistent with that basic purpose and, absent special indications of a different intent, should be used in stack height calculations.

The EPA believes that it is most unlikely that any source with a current emission limitation has failed to claim full formula credit for a stack of formula height. Accordingly, the question whether a source can receive stack height credit up to formula height will involve only sources that want to actually raise their physical stack, not sources that simply want to claim more credit for a stack already in existence. A source will presumably not go to the trouble of raising an existing stack without some reason. If a source cannot show that the reason was in fact the desire to avoid a problem caused by downwash, then the inference that it was instead a desire for more dispersion credit is hard to avoid. A nuisance caused by downwashed emissions could include citizen or employee complaints or property damage. A source would be expected to show that complaints of this nature were reasonably widespread before getting credit under this section.

The EPA does not intend to make this rule retroactive to stacks that "commenced construction" on modifications that would raise them to formula height prior to October 11, 1983. Applying the court's retroactivity analysis, it appears:

1. The new rule does depart from prior practice. The EPA's 1973 proposed rule affirmatively encouraged sources with shorter stacks to raise them to formula

height.[7] Though EPA's 1976 guideline can be read as imposing a "control first" requirement on some stack height increases, its general thrust gave automatic credit for all stacks that met the "2.5" times formula.[8] Automatic permission was similarly set forth in the 1979 proposal, in the 1981 reproposal, and in the 1982 final rule. Only a notice published in 1980, but later withdrawn, departs from this trend, requiring the use of field studies or fluid modeling demonstrations to justify stack height increases up to GEP formula height.[9] Even then, the notice would have made this policy prospective in its application.

2. Sources that raised stacks in reliance on this past EPA guidance assuming the availability of dispersion credit cannot be distinguished from the sources, in the example approved by the court, that built stacks to the traditional formula in an identical expectation of dispersion credit.

3. It cannot be said that the raising of stacks to formula height is a practice that Congress "affirmatively sought to end." It is not mentioned in the text of the statute or its legislative history. Further, as the court has already noted, the statute attributes a degree of presumptive validity to the formula on which sources that raise their stacks will have relied.

Discretion to Require Fluid Modeling. Several commenters argued that EPA's proposal to allow agencies to require the use of fluid modeling was unnecessary, since EPA had already documented the validity of the GEP formulae. Furthermore, these commenters argue that this allowance would make fluid modeling the rule, rather than the exception. This would result, the commenters state, because it was their expectation that agencies or environmental groups would nearly always call for fluid modeling demonstrations during the permit application and review process.

Other commenters stated that providing the discretion to require fluid modeling was appropriate, since EPA had failed to demonstrate that the GEP formulae represented the minimum height necessary to avoid excessive concentrations.

Response. The Court of Appeals directed EPA to reexamine whether its rules should allow States, as a matter of discretion, to require even sources that planned to rely on the formula to show instead by fluid modeling that a stack this high was required to avoid dangers to health and welfare caused by downwash. The court suggested that EPA should include such a provision unless it could find that the formula was so accurate, or tended so much to err on the low side, as to make discretionary authority to adjust formula height downward unnecessary.

The EPA believes that the court was mistaken in its conclusion that a stack at formula height is likely to generate downwash concentrations as great as 40 percent only in uncommon situations. In fact, EPA's observations indicate that when stacks are built to GEP formula height, an increase in concentrations due to downwash can still be expected to occur that is between 20 and 80 percent greater than the concentration that would occur in the absence of building influences.[10]

Nevertheless, in response to the court's remand, EPA is including in this final rule a provision for the authority administering these rules to require field studies or fluid modeling demonstrations, even for stacks built to formula height, in cases where it believes that the formula may significantly overstate the appropriate stack height credit.[11]

While EPA believes the formula is a reasonable rule of thumb indicating the stack height needed to avoid some probability of a standards violation and a significantly greater probability of a local nuisance, actual results in any given case may vary somewhat based on specific circumstances. The EPA has attempted to minimize this possibility within the limits of available data by identifying two particular situations in which it believes that the formulae may not be reliable indicators of GEP: Porous structures and buildings whose shapes are aerodynamically smoother than the simple block-shaped structures on which the formulae are based.[12]

However, EPA acknowledges that other situations, of which the Agency is not presently aware, may arise wherein the formulae may not be adequate.

The EPA intends to "grandfather" any source that relied on the formula in building its stack before the date of EPA's 1979 proposal from the effect of this discretionary reexamination requirement.

Only in that proposal did EPA first suggest that such a discretionary reexamination provision might be included in the final rule. The retroactivity analysis set out earlier therefore supports exempting stacks built in reliance on EPA guidance before that date from discretionary reexamination. Indeed, a failure to "grandfather" these sources would lead to the paradoxical result that a source that had built a GEP stack under the traditional EPA formula would have its direct reliance interests protected by the "grandfather" provision previously upheld by the court, but could then lose that "grandfathered" credit through a case-specific demonstration requirement showing that the traditional formula was somewhat inaccurate—the very reason behind the change in the formula properly found non-retroactive by EPA earlier.

Given this background, EPA believes that the effect on emissions of including or of excluding a provision for discretionary determinations from this rule is likely to be very small. Building stacks above formula height, and raising stacks below formula height to formula height, are covered by regulatory provisions already discussed. The only case left for discretionary determinations to address is the building of stacks at formula height in the post-1979 period. However, all major sources built since that time are already controled to SO_2 emission rates no greater than 1.2 lb./mmBTU—and, not uncommonly much less—under various EPA regulations. All new power plants on which construction "commenced" since 1971 must meet EPA's NSPS mandating an emission rate no greater than this level. That standard was tightened for all power plants on which construction "commenced" after 1979. In addition, all "major" sources built since 1977 in areas subject to the Act's PSD requirements have had to install best available control technology. That technology must require the greatest degree of emission control that is achievable considering technology, economics, and energy impacts.[13]

[7] "The use of stack height up to the level of good engineering practice is encouraged by EPA in order to avoid local nuisances." (38 FR 25700).

[8] 41 FR 7451 (February 18, 1976); Guideline Sections B.1, C.1(2), C.2(2).

[9] 45 FR 42279 (June 24, 1980); specific discussion of stack height credit is discussed at 42281–2.

[10] Guideline for Determination of Good Engineering Practice Stack Height, pp 20–23. This is further illustrated in Figures 5 and 6.

[11] Quite apart from any such regulatory provision, States have authority to require such demonstrations, on the terms outlined or on stricter or more lenient terms, under the savings provisions of section 116 of the Clean Air Act.

[12] Earlier EPA guidance, although expressing reservations about the accuracy of the formula when applied to rounded structures, allowed its use for certain tapered structures and cooling towers. "Guideline for Determination of Good Engineering Practice Stack Height," July 1981 at 38–40. For this reason, EPA will grandfather any credits for such structures that were granted prior to November 9, 1984. Since EPA guidance has never allowed credit for porous structures, the restriction in this rule for such structures applies to all stacks in existence since December 31, 1970.

[13] Clean Air Act section 169

If such sources had to show that use of a formula height stack was needed to avoid exceedances of the NAAQS or PSD increments, that might prove difficult for many of them. The likelihood of such exceedances tends to decrease as the emission rate for the source decreases. By the same token, the incremental emission reductions available from the sources that are at issue here tend to be small and among the most expensive available. In terms of emission reductions, little is at stake where these sources are concerned.

Accordingly, the rules will require such sources, if a reviewing authority calls for a demonstration, to the rules show that the use of a formula stack height is needed to avoid a 40-percent increase in concentrations due to downwash. This will provide a rough check on whether the formula, as applied in the particular case at issue, produces the result it was designed to produce.

The EPA is not providing here for sources to justify their formula height stacks by arguing that the height in excess of that needed to avoid NAAQS violations is needed to avoid a local nuisance. The discretionary modeling requirement is designed for application to stacks before they were built. Beyond that, there is no way to determine based on the *absence* of a local nuisance that a formula height stack is not too tall, in the way that the *presence* of a nuisance shows that a stack under formula height in fact is too short. Accordingly, there will be no way, as there was with short stacks being raised, to determine from actual experience whether a local nuisance would occur at a shorter stack height. Though avoiding local nuisance is a legitimate purpose for which stacks are built, it would be very difficult to show by modeling what stack height was needed to avoid it.

Some commenters have misunderstood EPA's allowance of discretion to require fluid modeling as requiring such modeling whenever *any* individual or entity called for such a demonstration. This discretion rests explicitly with the reviewing agencies who have always had the prerogative to require more stringent analyses in the SIP process, and no obligation is implied for these agencies to require fluid modeling simply because it has been called for by some individual during the permit review process. It is EPA's expectation that technical decisions to require such additional demonstrations would be based on sound rationale and valid data to show why the formulae may not be adequate in a given situation. In any case, given the burden of reviewing a fluid modeling demonstration, an agency is not likely to exercise this option absent sufficient justification. Consequently, EPA disagrees with the commenters' contention that fluid modeling will supplant the use of the GEP formulae, except in what EPA believes will be unusual instances.

Reliance on the 2.5H Formula. In limiting the applicability of the 2.5H formula to those cases where the formula was actually relied upon, the November.9 proposal defined such reliance in terms of stack design. A number of comments indicated that actual stack design and construction may ultimately be control, not by the 2.5H engineering rule, but by construction materials specifications. Consequently, while 2.5H rule may have provided an initial starting point in stack design, the rule may not have dictated final stack height. In other cases, it was argued that a number of source owners may have constructed their stacks in excess of what was determined to be minimum GEP for precautionary reasons, for process requirements, or in anticipation of additional growth in the area surrounding the facility, even though emission limitations for these sources would have been limited then, as now, to formula height. Consequently, it was argued that EPA should allow sources to demonstrate reliance on the formula in the calculation of emission limits as well as in the design of the stack.

In response to EPA's request for comments on what evidence should be considered acceptable in determining reliance on the 2.5H formula, some commenters urged EPA to consider reconstructed evidence, e.g., affidavits from design engineers or copies of correspondence indicating past reliance on EPA guidance. Other commenters stated that "reliance" should be very strictly construed, that EPA should be circumspect in its review of reliance demonstrations, and that only contemporaneous documentary evidence, such as blueprints and facility design plans, be accepted as evidence.

Response. The EPA is in general agreement with the view that reliance should be considered in relation to the emission limitation for the source, not the design. Since section 123 specifically prohibits EPA from regulating actual stack heights and rather regulates stack height credits used in setting emission limitations, it would be illogical to require that sources demonstrate reliance on the 2.5H formula for actual stack design. Moreover, such an approach would contradict principles of sound planning, in that it would penalize those sources that have built taller stacks in anticipation of facility expansion or other growth in the area that could influence GEP determinations.

If a stack has been built taller than 2.5H formula provides, while the emission limitation has been calculated assuming 2.5H credit, a convincing demonstration has been made that the source properly relied on the formula. Conversely, if the emission limitation for the source is based on some other stack height credit, such as 2.8H, 3.5H or some other number, it would be difficult to show that the GEP formula had in fact been relied on.

In some cases the emission limit information may be unavailable or inconclusive. In such cases, EPA will allow reliance on reconstructed evidence of construction intent.

In comments submitted during the public comment period and in response to questions raised by EPA at the public hearing held on January 8, 1985, industry representatives repeatedly stated that contemporaneous evidence of reliance on the 2.5H formula, such as facility design plans, dated engineering calculations, or decision records are rarely, if ever, retained for more than a few years after construction of the facility is completed. Consequently, they argued that most cases of legitimate reliance would be denied if contemporaneous evidence were required in order to retain for the 2.5H formula.

The EPA agrees. Additionally, credit afforded by the 2.5H formula in excess of that resulting from the use of the H+1.5L derivative is likely to be small, except when the building on which stack height credit is based is substantially taller than it is wide. Finally, it is EPA's view that the court did not intend that sources be subject to a rigorous or overly stringent of reliance, but only that they be accorded a reasonable opportunity to show reliance on the 2.5H formula. For these reasons, EPA will allow the submission of reconstructed, i.e., noncontemporaneous documentary evidence to demonstrate reliance on the 2.5H formula.

Definition of "Nearby". Comments were submitted by UARG and others, arguing that, effectively, no limitation should be placed on the consideration of terrain-induced downwash. Alternatively, some of these commenters argued that the court decision requires that a limitation be adopted that does not apply any distance restriction of ½ mile in modeling terrain effects such as is

applied to structures in the use of GEP formulae, but rather allows consideration of all terrain that results in the same downwash effect as those structures within ½ mile of the stack.

Other commenters have argued that the court decision and legislative history preclude EPA from allowing consideration of any terrain beyond a distance of ½ mile, regardless of where it begins.

Response. For the reasons summarized below, EPA does not accept either the interpretation that the court decision authorizes EPA to adopt a definition based solely on effect, or that it limits consideration exclusively to terrain features falling entirely within ½ mile.

When Congress discussed the allowance of credit for stack height to address downwash, it stated that the term "nearby" was to be "strictly construed," noting that if the term were to be interpreted "to apply to man-made structures *or terrain features* ¼ to ½ mile away from the sources or more, the result could be an open invitation to raise stack heights to unreasonably high elevations and to defeat the basic underlying committee intent." [14]

In its opinion, the court held that EPA could not give unlimited credit when modeling terrain features because that would conflict with the Congressional intention to impose artificial limits on that credit. The court was not presented with, and did not address, the question of what to do about terrain features that "began" within ½ mile and extended outside it. The approach adopted by EPA carried out this congressional purpose to impose an artificial limit but at the same time reflects the real facts more closely than an absolute ½ mile limitation.

Unlike man-made structures, terrain features do not have readily definable dimensions other than height. For this reason, EPA has defined "nearby" as generally allowing inclusion of consideration of terrain features that fall within a distance of ½ mile of the stack. EPA's definition will permit consideration of such terrain that extends beyond the ½ mile limit if the terrain begins within ½ mile, allowing that portion within 10 times the maximum height of the feature, not to exceed 2 miles, as described in the proposal.

To define when a terrain feature "begins" within ½ mile, EPA has related terrain height at the ½ mile distance to the maximum stack height that could be justified under the other two methods for determining GEP. Accordingly, EPA will require that terrain features reach a height at the ½ mile distance limit of either 26 meters (i.e., 65 meters divided by 2.5) or 40 percent of the stack height determined by the GEP formulae applied to nearby buildings.

Treatment of New versus Existing Sources Under the Definition of "Nearby". In the proposal, EPA requested comment on whether new sources should be treated differently from existing sources and presented two options for addressing them.

Few comments were received on these options. Several questioned the logic of distinguishing between new and existing sources in the regulations. One commenter argued that new and existing sources should both be subject to the strict ½ mile limit proposed under one option for new sources only. This has already been discussed under EPA's response to comments on the general definition of "nearby" and is not addressed further here.

Response. New sources are initially subject to more stringent control requirements than many existing sources. Consequently, it is less likely that the emission limitations and stack height credits for these sources will be affected by terrain features. Furthermore, EPA believes that the effect of applying a more restrictive distance limitation will be insignificant and will result only in minor changes in siting, rather than substantial relocation of sources. For this reason, EPA has selected the second option, treating new and existing sources identically under the definition of "nearby."

EPA is giving this definition of "nearby" retroactive application to December 31, 1970. The court's decision makes clear its conclusion that Congress affirmatively focused on this issue and decided thus making application as of the enactment date proper.

Definition of Other Dispersion Techniques. The EPA received many comments on the proper scope of the definition of "dispersion techniques," and perhaps more on the appropriate bounds of the exclusions. Industry commenters generally argued that EPA had improperly proposed to deny consideration for plume-enhancement effects that are "coincidental" with techniques and practices routinely carried out for sound engineering and economic reasons. They argued that EPA should prohibit credit only when a technique or practice was decisively motivated by a desire for dispersion credit. Such an approach would create a "but for" test using the intent of the source owner or operator as the basis for EPA's decisions.

Other commenters argued that EPA must use a test based purely on *effects*, prohibiting credit where a technique or practice has the effect of enhancing dispersion, regardless of any other justification.

Response. In the final regulation, EPA has rejected the polar positions discussed above. The argument that dispersion *effects* are forbidden regardless of motive is discussed and rejected as a part of the general response to the argument that only "well-controlled" sources can receive any dispersion credit.

Conversely, a pure "but for" test runs the risk of creating exclusions that effectively swallow the rule itself. The EPA judges that few, if any, circumstances are likely to arise in which some other benefit or justification cannot be asserted as the basis for a practice, and therefore for such an exclusion.

Where prospective evaluation of merged gas streams, or combined stacks, is concerned, there is no reason to assume the serious administrative burdens investigating such claims might entail. The court directed EPA to apply an intent test "at a minimum," and left it free to take an approach that may be less generous toward credit for combined stacks. Since sources in the future will be able to plan against the background of rules that define permissible credits precisely, little unfairness results from a restrictive approach.

When retrospective application is concerned, however, the retroactivity analysis spelled out by the court directs that an intent-based test be employed as described later.

Accordingly, after considering the record on these matters, EPA has determined to take a "middle-ground" approach to this question. The final regulation retains the same broad prohibition found in the proposal on increasing exhaust gas plume rise by manipulation of parameters, or the combining of exhaust gases from several existing stacks into one stack, with several classes of exclusions. These exclusions recognize the existence of independent justifications based on engineering and/or economic factors, and include:

(1) Demonstration of original facility design and construction with merged gas streams;

(2) Demonstration that merging after July 8, 1985 is part of a change in operation that includes the installation of pollution controls and results in a net reduction in allowable emissions of the pollutant for which credit is sought; or

[14] H.R. Report, No. 294, 95th Cong., 1st Sess. 93 (1977).

(3) Demonstration that merging before July 8, 1985 was part of a change in operation that included the installation of control equipment, or was carried out for sound economic or engineering reasons. An allowable emissions increase creates the presumption that the merging was not carried out for sound economic or engineering reasons.[15]

Of these exclusions, the first is identical to the proposal, and the second and third are modifications of the second exclusion included in the proposal, with a refinement based on prospective/retroactive application.

The first exclusion was retained for the reasons stated in the proposal. After reviewing the comments submitted, EPA determined that its previous conclusion—that standard practice in designing and constructing facilities routinely includes venting emissions from several units into a common or multiflued stack—is correct. Sound engineering and economic reasons, based on costs of constructing and maintaining separate stacks, availability of land, and cost savings for pollution control equipment support facility design and construction considerations. Even if air pollution requirements did not exist at all, sources would have incentives to use as few stacks as possible.

Since *increasing* plume rise, rather than plume rise itself, is a "dispersion technique" and original design and construction define the initial base, such original design and construction of merged gas streams is not considered a dispersion technique. Moreover, in designing the facility, a source can usually choose to build one larger unit rather than several smaller units. Therefore, prohibiting credit for original design generally only effect the design of units and not the plume rise.

Objections have been raised to applying this logic to sources which are constructed over a period of time, but use a single stack. However, the same factual arguments just listed would apply is the same, if the original design included provision for the additional units in the plans for the facility, and in the design and construction of the stack. In such a case, the later units merged into the stack would be included within the exclusion.

In addition, it would be logically very difficult to apply a rule denying credit to original design stacks. EPA or the State would have to assume how many stacks would have been built absent a desire for dispersion credit, where they would have been located, and how high they would have been. Since these alternative stacks would be purely hypothetical, there would be no clear way of answering these questions; the answer would simply have to be selected arbitrarily from the wide range of possible answers. This problem is absent when existing stacks have been combined.

In contrast, EPA finds changes from the original design of a facility in order to include merged stacks to require a narrower judgment. The EPA concluded that, where prospective application is concerned, the exclusion should be available only to sources that combine stacks reduces allowable emissions of the pollutant for which the credit is granted. There are obvious economic advantages in combining stacks to reduce the number of emission control units that must be purchased. In addition, the installation of pollution control for the pollutant in question provides substantial assurance that the purpose of the combination is not to receive a more lenient emission limit.

However, given past EPA guidance on merging of stacks, EPA has concluded that retroactive application of this test would not be proper. The EPA guidance documents uniformly took the view that merging of separate stacks into a single stack "is generally not considered a dispersion technique" absent other factors such as excessive use of fans or other devices.[16] Each document provided guidance to a source of a Regional Office regarding the proper treatment of merged stacks in calculating emission limitations. Considering these statements, EPA must consider the standards expressed by the court, as previously discussed in this notice, in judging the propriety of a differing standard for retroactive application. Given the nature and applications of the guidance which it issued in the past, EPA judges the first two criteria—that is, whether the new rule represents an abrupt departure from well-established practice, and whether the parties against whom the new rule is applied relied on the former rule—to be satisfied. In addition, applying the prospective criteria to past practice would require significant changes in fuel and/or control equipment for parties whose emission limits were based on previous guidance. Finally, and particularly where sources have not been allowed to increase their previous emissions as a result of the combining of stacks, EPA does not judge the statutory interest to be overriding in this instance, since the rule even in its retrospective version only exempts sources that can show a reasonable non-dispersion enhancement ground for combining stacks, and thereby implements the "intent" test suggested by the court. On the other hand, EPA has never suggested that combined stacks that *cannot* meet such a test are proper. Sources whose actual emissions are increased, or whose emission limitations are relaxed in connection with the combining of stacks create a strong presumption that the combination was carried out in order to avoid the installation of controls. Such combinations would indeed run counter to the statutory purpose, and retrospective application of a test that forbids them is therefore proper.

Exemptions from the Definition of Dispersion Techniques. The EPA received numerous comments in response to its request for input on what consideration, if any, should be given to excluding sources from the definition of "Dispersion Techniques" whose emissions are below a specified level or whose stacks are less than the *de minimis* height. These commenters argued that combining gas streams in particular often had an economic justification independent of its effects on dispersion, and therefore should not be generally forbidden. Other comments stated that, in considering any such exclusion, EPA should consider the effect on total atmospheric loadings.

Response. Some limitation on the number of sources affected by the definition at "dispersion techniques" necessary for EPA to carry out the stack height program. There are currently estimated to be over 23,000 sources of SO_2 in the United States with actual emissions exceeding 100 tons per year. It would not be possible for EPA or States to review the emission limits of even a significant fraction of this number within a reasonable time period. Twenty-two thousand of these sources have emissions less than 5,000 tons per year and contribute a total of less than 13 percent of the total annual SO_2 emission.[17] For this reason, and for reasons of administrative necessity discussed earlier, EPA is adopting an exemption from prohibitions on manipulating plume rise for facilities with allowable SO_2 emissions below

[15] In cases where no emission limit existed for a source prior to the merging, such merging is not to result in any increase in the actual emissions that occured prior to the merging.

[16] Memorandum from Darryl Tyler to Steven Rothblatt, August 20, 1980. See also letter from Walt Barber from Howard Ellis, October 6, 1980, and from David Stonefield to Joseph Paisie, June 27, 1980.

[17] Memorandum from Eric Ginsburg, OAQPS to David Stonefield, "Stratification of SO_2 Point Sources by Size," June 25, 1985.

5,000 tons per year. The EPA believes the effect of this exemption on total SO_2 emissions to be *de minimis* in nature. Even if these sources were able to increase their emission rates as the result of an exemption from the definition of dispersion techniques, their combined effect would not be significant. Indeed, because these sources are exempt on the basis of their annual emissions, there exists an upper limit to the extent to which they may obtain relaxed emission limitations, i.e., to maintain an exemption, the annual emissions of a source may never exceed 5,000 tons per year. For these reasons, the 5,000 ton limit passes a *de minimis* test even more clearly than the 65-meter limit included without challenge in the prior version of this rule. Moreover, EPA believes that a large majority of these sources would not be inclined to seek less stringent emission limitations, in part because a substantial portion of them are limited by State and local fuel use rules.

The EPA believes at this time that a *de minimis* size exemption is justified only for sources of SO_2 and that the number of small sources for which emission limitations for other pollutants are a significant concern would not support a similar exemption. The EPA will continue to review the need for such exemptions and, if deemed appropriate, will propose them for review and comment at a later date.

Plume Impaction. The EPA received a number of comments requesting that credit for plume impaction be retained on the grounds that eliminating such credit would have severe impacts on existing sources. Several approaches were offered for overcoming plume impaction effects in modeling to determine emission limitations based on GEP stack height. Generally, these approaches focused on modifying the stack-terrain relationship represented in the models. Several commenters argued along these lines that the court recognized and approved of EPA's attempt to avoid the effects of plume impaction, but only disapproved of EPA's regulatory method in allowing sources to avoid impaction. These commenters argued that the court did not preclude EPA from allowing credit to avoid plume impaction, but only from allowing credit for stack height in excess of GEP; this, it was argued, could be remedied in a way that was consistent with the court decision by incorporating impaction avoidance within the definition of GEP. It was also suggested that EPA give its "interim approval" to the use of certain refined complex terrain models, in particular the Rough Terrain Display Model (RTDM), to calculate emission limitations for sources affected by changes to the stack height regulation.

Response. The EPA agrees that the court was cognizant of the problem of plume impaction and noted that there was much to recommend EPA's allowance of credit for impaction avoidance. However, the allowance of credit for plume impaction was not remanded to EPA for revision or reconsideration, but was reversed by the court as exceeding EPA's authority.

The EPA does not agree that it would be possible to redefine GEP in a manner that allowed credit for avoiding impaction, since GEP is explicitly defined in terms of preventing excessive concentrations due to downwash, wakes, and eddies. Plume impaction is a phenomenon completely unrelated to downwash and, rather, is a consequence of effluent gases being emitted at an insufficient height to avoid their striking downwind hillsides, cliffs, or mountainsides prior to dilution. Manipulation or "adjustment" of modeling parameters to avoid predicting theoretical plume impaction where actual stacks have been constructed above GEP would be tantamount to granting the same impaction credit that was invalidated by the court. Furthermore, EPA believes that the manipulation of modeling parameters for no other reason than to avoid an undesirable result is technically indefensible.

The EPA is in the process of revising its "Guideline on Air Quality Models." A number of individuals commenting on the guideline have requested that EPA approve the use of the RTDM model as a preferred technique. Further discussion of this issue can be found in documents associated with EPA's action on the modeling guideline (Docket No. A-80-46). With respect to the revised stack height regulation, EPA has not rejected the use of RTDM. To the extent that appropriate and complete data bases and information on model accuracy are available, EPA may approve the use of RTDM on a case-by-case basis when executed in accordance with the guideline requirements. Sponsors of RTDM and presently developing more extensive support for broader applications of the model. When such support is received and reviewed by EPA, consideration will be given to allowing more general use of RTDM in regulatory activities such as compliance with the stack height rule.

Timetable for State Implementation. A number of commenters stated that it was not possible to conduct the necessary analyses, prepare and submit revised State rules and source-specific emission limitations within the 9-month timeframe referred to in the November 9 proposal. A variety of alternative schedules were proposed by these commenters for consideration by EPA.

Response. As with EPA's previous allowance of credit for plume impaction, the timetable for preparation and submittal of revised SIP's was not an issue remanded by the court. The EPA is in agreement that these revisions to the stack height regulation will require significant efforts by State and local agencies, individual emission source owners and EPA Regional and Headquarters offices in order to comply within the 9-month timeframe required by section 406(d)(2) of the 1977 Clean Air Act Amendments. It was based on this concern that EPA originally provided a two-step process for States to follow in revising their plans and submitting them to EPA for approval. However, the court found that this effort was explicitly contrary to section 406(d)(2) and ordered EPA to follow the 9-month schedule provided in the Clean Air Act.

New Sources Tied into Pre-1971 Stacks. As indicated earlier, in response to the court opinion, EPA proposed to deny "grandfathered" status to post-1970 sources tying into pre-1971 stacks. Some commenters stated that EPA was in no way prohibited from allowing credit for new sources ducted into pre-1971 stacks exceeding GEP height. Rather, they indicated that EPA simply had to provide justification for such allowance.

Other commenters indicated general support for EPA's proposal with respect to new sources tying into grandfathered stacks, but suggested that several expansions or clarifications be provided, most notably that, in addition to new and major modified sources, reconstructed sources not be allowed greater than GEP stack height credit when tying into greater than GEP stacks.

Response. In further review of this issue, EPA can find no convincing rationale to allow sources constructed after December 31, 1970, to avoid GEP restrictions simply by ducting their emissions into a stack that is "grandfathered" under section 123. On the contrary, the intent of section 123 to limit credit for stack height in excess of GEP suggests that EPA should not allow credit for such stack height except to honor financial commitments made prior to the end of 1970. Sources in existence after that date should be treated equally under the regulation and not allowed to avoid legitimate control requirements.

through the use of "grandfathered" stack heights.

Sources undertaking major modification, or reconstruction become subject to additional control requirements under the Clean Air Act and are treated as "new sources" for the purpose of new source review and PSD requirements. EPA finds it appropriate that GEP requirements should be invoked at the time that other requirements for new, modified, or reconstructed sources become applicable.

Summary of Modifications to EPA's Proposal Resulting from Public Comments

Based on comments received during the public comment period, EPA has made a number of revisions to its proposed regulation in addition to those discussed above. These revisions are summarized below.

Section 51.1(hh)(2)(B)(ii) of the regulation has been clarified to require sources merging gas streams after July 8, 1985 to achieve a net reduction in allowable emissions. This change was made to make it clear that the effects of merging should not be used as a way of achieving compliance with present emission limits and to avoid penalizing sources who are presently emitting at less than allowable levels.

Section 51.1(hh)(2)(B)(iii) allows credit for a source that merged gas streams in a change of operation at the facility prior to July 8, 1985 that included the installation of control equipment or had other sound engineering or economic reasons. Any increase in the emission limitation, or in the previous actual emissions where no emission limitation existed created a presumption that those sound reasons were not present.

Section 51.1(hh)(2)(E) has been added to exclude from the definition of prohibited "dispersion techniques" the use of techniques affecting final exhaust gas plume rise where the resulting total allowable emissions of SO_2 from the facility do not exceed 5,000 tons per year.

Section 51.1(ii)(1) has been revised to specify that the 65 meter *de minimis* height is to be measured, as in other determinations of GEP stack height, from the ground-level elevation at the base of the stack. This does not represent a substantive change in the rule or in its application relative to past practices, but rather a simple clarification.

Section 51.1(ii)(2) has been revised to require that source owners demonstrate that the 2.5H formula was relied on in establishing the emission limitation.

Section 51.1(ii)(3) has been revised as discussed elsewhere in this notice to specify that an emission rate equivalent to NSPS must be met before a source may conduct fluid modeling to justify stack height credit in excess of that permitted by the GEP formulae.

Section 51.1(jj) now defines "nearby" for purposes of conducting field studies or fluid modeling demonstrations as 0.8 km (½ mile), but allows limited consideration of terrain features extending beyond that distance if such features "begin" within 0.8 km, as defined in the regulation.

Section 51.1(kk) has been revised to provide separate discussions of "excessive concentrations" for the separate situations discussed earlier in this preamble. As that discussion makes clear, EPA believes that the differing categories of sources subject to this rule are best addressed by requirements that vary somewhat with those circumstances. This definition embodies that approach.

Section 51.12(k) has been corrected to provide that the provisions of § 51.12(j) shall not apply to *stack heights* in existence before December 31, 1970. The proposal had incorrectly stated that ". . . § 51.12 shall not apply to *stacks* existence. . . ."

Program

This regulation does not limit the physical stack height of any source, or the actual use of dispersion techniques at a source, nor does it require any specific stack height for any source. Instead, it sets limits on the maximum credit for stack height and other dispersion techniques to be used in ambient air modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. Sources are modeled at their actual physical stack height unless that height exceeds their GEP stack height. The regulation applies to all stacks in existence and all dispersion techniques implemented since December 31, 1970.

State Implementation Plan Requirements

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, EPA is requiring that all States (1) review and revise, as necessary, their SIP's to include provisions that limit stack height credits and dispersion techniques in accordance with this regulation and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States must prepare revised limitations consistent with their revised SIP's. All SIP revisions and revised emission limitations must be submitted to EPA within 9 months of promulgation of this regulation.

Interim Guidance

In its proposal, EPA stated that it would use the proposed regulation to govern stack height credits during the period before promulgation of the final regulation. The EPA further stated that any stack height credits that are granted based on this interim guidance would be subject to review against the final rules and may need to be revised. Consequently, with these final rules, EPA is requiring that any actions that were taken on stack heights and stack height credits during this interm period be reviewed and revised as needed to be consistent with this regulation.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have significant economic impacts on a substantial number of small entities. This rule is structured to apply only to large sources; i.e., those with stacks above 65 meters (213 feet), or with annual SO_2 emissions in excess of 5,000 tons, as further noted in the rule. Based on an analysis of impacts, electric utility plants and several smelters and pulp and paper mills will be significantly affected by this regulation.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. EPA's analysis of economic impacts predicts a potential cost to emission source owners and operators exceeding $100 million; therefore, this is a major rule under Executive Order 12291. However, due to the promulgation deadline imposed by the court, EPA did not have sufficient time to develop a full analysis of costs and benefits as required by the Executive Order. Consequently, it is not possible to judge the annual effect of this rule on the economy. A preliminary economic impact analysis and subsequent revision were prepared and are in the docket.

For any facility, the air quality and economic impact of the stack height regulation generally depends on the extent to which the actual stack at that facility conforms to GEP stack height.

Thus, when the regulation is applied to large sources, i.e., those with stack height greater than GEP and emissions greater than 5,000 tons per year, it will have the potential for producing emission reductions and increased control costs.

A preliminary evaluation of the potential air quality impacts and a cost analysis of the regulation was performed at the time of proposal. The impacts identified were established in isolation of other regulatory requirements. The report predicted a range of impacts, from a "low impact" scenario that presumed that many potentially affected sources would be able to justify their existing stack heights, configurations, and emission limitations to a "high impact" scenario which assumed that all of the potentially affected sources would be required to reduce their emissions to some degree.

In the development of its final rulemaking action, EPA refined its evaluation of potential impacts, producing revised estimates of the probable costs of the changes to the regulation and expected reductions in SO_2 emissions. As a result of this refinement, EPA estimates that the rule will yield reductions in SO_2 emissions of approximately 1.7 million tons per year. The annualized cost of achieving these reductions will be aproximately $750 million, and the capital cost is expected to be approximately $700 million.

This regulation was reviewed by the Office of Management and Budget, and their written comments and any responses are contained in Docket A-83-49.

Judicial Review

The EPA believes that this rule is based on determinations of nationwide scope and effect. Nothing in section 123 limits its applicability to a particular locality, State, or region. Rather, section 123 applies to sources wherever located. Under section 307(b)(1) of the Clean Air Act [42 U.S.C. 7607(b)(1)], judicial review of the actions taken by this notice is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia and within 60 days of the date of publication.

List of Subjects in 40 CFR Part 51

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

Dated: June 27, 1985.

Lee M. Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Part 51 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 110, 301(a), and 123, Clean Air Act as amended (42 U.S.C. 7410, 7601(a) and 7423).

2. Section 51.1 is amended by revising paragraphs (hh), (ii), (jj), and (kk) as follows:

§ 51.1 Definitions.

* * * * *

(hh)(1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(i) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of exhaust gas streams where:

(A) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) After July 8, 1983, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iii) Smoke management in agricultural or silvicultural prescribed burning programs;

(iv) Episodic restrictions on residential woodburning and open burning; or

(v) Techniques under § 51.1(hh)(1)(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(ii) "Good engineering practice" (GEP) stack height means the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack:

(2) (i) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR Parts 51 and 52,

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(ii) For all other stacks,

$$H_g = H + 1.5L,$$

where

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s)

provided that the EPA, State or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the EPA State or local control agency, which ensures that the emissions from a stack do not result in excessive

concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(jj) "Nearby" as used in § 51.1(ii) of this part is defined for a specific structure or terrain feature and

(1) for purposes of applying the formulae provided in § 51.1(ii)(2) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (½ mile), and

(2) for conducting demonstrations under § 51.1(ii)(3) means not greater than 0.8 km (½ mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (H_t) of the feature, not to exceed 2 miles if such feature achieves a height (H_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in § 51.1(ii)(2)(ii) of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under § 51.1(ii)(3) and means:

(1) for sources seeking credit for stack height exceeding that established under § 51.1(ii)(2), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (40 CFR 51.24 and 52.21), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the State implementation plan, an alternative emission rate shall be established in consultation with the source owner or operator;

(2) for sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under § 51.1(ii)(2), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in paragraph (kk)(1) of this section, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under § 51.1(ii)(2) where the authority administering the State implementation plan requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in § 51.1(ii)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

3. Section 51.1 is further amended by removing paragraphs (ll) and (mm).

§ 51.12 [Amended]

4. Section 51.12 is amended by removing paragraph (l).

5. Section 51.12(j) is amended by removing "and (l)" from the first sentence.

6. Section 51.12(k) is revised as follows:

(k) The provisions of § 51.12(j) shall not apply to (1) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in §§ 51.18(j)(1)(v)(a), 51.24(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or (2) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

§ 51.18 [Amended]

7. Section 51.18(l) is amended by removing "and (l)" from the first sentence.

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federal register

Monday
July 8, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Permanent Program Performance Standards; Underground Mining Activities; Subsidence Control; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Permanent Program Performance Standards; Underground Activities; Subsidence Control

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise portions of its subsidence control rules relating to the protection of surface structures and facilities. This rulemaking is done pursuant to the Court's order in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C.) (Memorandum Opinion filed Oct. 1, 1984).

In conjunction with the comments on the proposed reclamation standard for structures damaged by subsidence, OSM also seeks comments on the deletion from the former 1979 rule of the requirement regarding a pre-subsidence survey and monitoring the degree of material damage to structures.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. eastern time on September 16, 1985.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Pittsburgh, Pennsylvania at local time on September 9, 1985. OSM will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. OSM will accept requests for public hearings until 5:00 p.m. eastern time on August 26, 1985.

ADDRESSES: *Written Comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 10 Parkway Center, Pittsburgh, Pennsylvania. The addresses for any hearings scheduled in other States will be announced prior to the hearings.

Requests for Public Hearings: Submit in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Mr. C.Y. Chen, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: 202-343-1501 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The time, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. C.Y. Chen (see "**FOR FURTHER INFORMATION CONTACT**") in writing of the desired hearing location by 5:00 p.m. eastern time on August 19, 1985. If no one has contacted Mr. C.Y. Chen to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only a few people express an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

On March 13, 1979, OSM promulgated permanent program rules (44 FR 14902) as required by section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.* In the 1979 rules, 30 CFR 817.121, 817.122, 817.124, and 817.126 established performance standards relating to subsidence control and reclamation at underground coal mines. The requirements for a pre-subsidence survey and a subsidence control plan as part of the permit application were established by 30 CFR 784.20.

Section 817.124 of the 1979 rule set forth requirements for the correction of subsidence-caused damage to both structures and surface lands without reference to State law. The 1979 rule required that underground operators mitigate the subsidence-related material damage by restoring the land to its premining capabilities, and by restoring, rehabilitating, removing and replacing, or purchasing damaged structures or facilities or alternatively, by compensating surface structure owners through the purchase of a noncancellable, premium prepaid insurance policy or other means designed to cover the amount of diminution in value caused by subsidence. 44 FR 14902, 15440 (March 13, 1979).

Industry plaintiffs challenged the restoration requirement of former 30 CFR 817.124 in *In Re: Permanent Surface Regulation Litigation*, No. 79-1144 (D.D.C. 1980) (*In Re: Permanent (I)*), and based their attack on the argument that Congress intended the insurance requirement of section 507(f) of the Act as the exclusive means for setting operator responsibility for subsidence damage. The Court rejected their argument and held that the prior rules for remedying the effects of subsidence "find support in the Act. The restoration requirement is consonant with section 515(b)(2) of the Act." *In Re: Permanent (I), supra*, February 26, 1980 Opinion at 63-64. The Court also held that the compensation requirement of the 1979 rules, which extended to surface structures and facilities, was "an insurance mechanism authorized by section 507(f)" of the Act. *Id* at 64.

On April 16, 1982, OSM proposed permanent program rules (47 FR 16604) to amend 30 CFR 784.20, 817.121, 817.122, 817.124 and 817.126 pertaining to subsidence control. On June 1, 1983, OSM promulgated the final permanent

rules on subsidence control. 30 CFR 784.20, 817.121 and 817.122. (48 FR 24638).

The June 1, 1983, rule at 30 CFR 817.121(c)(2) (48 FR 24652) made operators responsible to correct material damage to any structures and facilities resulting from subsidence to the extent required by State law. The rule at 30 CFR 817.121(c)(1) (48 FR 24652) required the operator to correct, to the extent technologically feasible, all subsidence-caused material damage to surface lands without regard to State law. In essence, the 1983 rule retained the land restoration requirement of the former rule, but changed the requirement to repair structures.

In the case of *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C.), citizen and environmental groups, industry and States challenged a number of OSM rulemaking proceedings, including provisions of the June 1, 1983, subsidence control rules.

On October 1, 1984, the Court issued a memorandum opinion. *In Re: Permanent Surface Mining Litigation (II)*, No. 79-1144 (D.D.C. 1984) (*In Re: Permanent (II)*, October Op.). Finding the Secretary's reading of the statute "reasonable," the Court upheld the land restoration requirements of § 817.121(c)(1) against an industry challenge that the regulation infringes on State laws which provide for remedies in contract and tort for subsidence damage to land. October Op. at 6-7. The Court reasoned that while these State remedies might "redress injuries suffered by private parties" they do not redress injury to the "land itself." *Id.* at 6. As the Court cautioned, private parties should not be able to circumvent Congress intent by forming contracts. The Court held that the Act was passed not only to protect individual property rights, but also to protect this Nation's land from the surface effects of underground mining for "generations yet unborn." *Id.* at 7. Therefore, the Court found that any State remedy inconsistent with the requirement of section 515(b)(2) to restore land materially damaged by subsidence would be preempted by the Act. *Id.*

On the other hand, the Court held that the 1983 final rule, 30 CFR 817.121(c)(2) (48 FR 24652), requiring operators to redress subsidence-caused material damage to structures only to the extent required by State law, represented a "radical change" from both the earlier rule and the 1982 proposed rule, 30 CFR 817.121(c), 47 FR 16604, 16610 (April 16, 1982), which both required such redress irrespective of State law. October Op. at 10. Accordingly, the Court remanded 30 CFR 817.121(c)(2) to the Secretary for proper notice and comment. *Id.* at 10-11.

The Court also found that the 1979 rule requiring the subsidence control plan to include the results of a pre-subsidence survey of structures, and a detailed description of any monitoring proposed to measure subsidence near structures, 30 CFR 784.20(d), 44 FR 14902, 15369 (March 13, 1979), was deleted in the 1983 final rule without adequate notice. October Op. at 14. Because the Court believed this regulation relates to the issue of whether the operator must restore structures materially damaged by subsidence, the Court ordered the Secretary to request additional public comments on this deletion in conjunction with the comments on 30 CFR 817.121(c)(2). *Id.*

On February 21, 1985, in accordance with the Court's ruling, OSM suspended a portion of 30 CFR 817.121(c)(2). 50 FR 7274, February 21, 1985.

III. Discussion of Proposed Rule

Proposed § 817.121(c)(2)

OSM has decided to repropose § 817.121(c)(2) of the 1983 rule which limits the requirement to correct subsidence-caused material damage to structures and facilities to the degree imposed by State law. OSM's authority for the proposed rule derives, in part, from section 507(f) of the Act, which makes the operator's obligation to compensate the property owner contingent upon his obligation to undertake such remedial measures under State law.

The proposed rule is supported by both law and policy. As discussed below, the Surface Mining Act does not require operators to repair subsidence-caused material damage to structures irrespective of State law. OSM is not asserting that it could not impose such a standard, but only that the law does not require it and that such a sweeping responsibility is inappropriate.

Section 516(b)(1) of the Act requires underground mine operators to prevent subsidence-caused material damage and to maintain the value and use of "surface lands" to the "extent technologically and economically feasible." This provision does not itself require the restoration of either land or structures damaged by subsidence. However, through section 516(b)(10), the surface mining performance standards of section 515 may be made applicable to any surface impacts of underground mining not specified in section 516(b). Section 515(b)(2) requires the surface coal mining operator to "restore the land affected" to a condition capable of supporting premining uses. There is no similar explicit mandate from Congress to require restoration of structures materially damaged by subsidence.

The word "land," as it is used in section 515(b)(2) may be interpreted to refer to land in its unimproved or natural state. *See* 48 FR 24344. This interpretation of land as a natural resource is consistent with the use of that term in other provisions of the Surface Mining Act. For instance, in order to protect the "stability of the land," the Act requires the suspension of underground coal mining under "buildings" if imminent danger exists. Section 516(c). Also, when setting reclamation priorities for abandoned mine lands, Congress distinguished between the "restoration of land and water resources * * * previously degraded by adverse effects of coal mining practices" and the repair of "facilities adversely affected by coal mining practices." Section 403.

If Congress meant to include structures and facilities in section 515(b)(2), it certainly would have enumerated such. Nothing in the plain wording of section 515(b)(2) suggests that its application to structures as well as to land is mandated. To the contrary, as suggested by the Court in upholding the land restoration requirements of 30 CFR 817.121(c)(1), there is a sound basis for distinguishing between the restoration requirement for land and that for structures. *See* October Op. at 5-6.

In policy, as well as law, there is clear reason to distinguish the protection provided for land and structures. Where an underground mine operator purchases from the surface owner the right to subside the land, the individual's property rights are protected, but the long term public interest in the land is not protected. Thus, § 817.121(c)(1) functions to prevent this injury to the land by assuring that in all cases, irrespective of private contract, this valuable natural resource will be restored to its premining capabilities, to the extent technologically feasible.

On the other hand, there is no overriding environmental or public interest in protecting a building or structure that its owner does not seek to protect. For example, some jurisdictions allow an operator to purchase the right to subside a structure owned by the surface owner. In such an instance, the parties have worked out a mutually agreeable solution to account for private damage. The operator should not have to recompensate the surface owner as the 1979 rules required. The proposed rule leaves this determination to State law.

While private parties may not be motivated to protect the environment, they have a great incentive to protect structures that they own. State law has traditionally provided remedies in contract and tort for those parties who own subsidence-damaged structures. Accordingly, there is no clear need for OSM to step in and protect owners of these structures in the absence of clear congressional mandate.

At least one State has passed legislation which specifically addresses subsidence under structures. Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act of 1966, 52 Pa. Stat. Ann. section 1406 *et seq.* (Purdon's) establishes certain classes of protected structures. For instance, if a materially damaged occupied dwelling were in existence on the date of enactment of the Pennsylvania statute, the operator would have to repair the dwelling or compensate the owner for the diminution in value. The proposed rule would allow a State, such as Pennsylvania, to choose to protect selected classes of structures. *See* 48 FR 24645.

Deletion of § 784.20(d)

In addition to remanding § 817.121(c)(2) of the 1983 rule on the grounds of the Administration Procedure Act, the Court ordered OSM to request comments on the deletion of 30 CFR 784.20(d), 44 FR 14902 (March 13, 1979), from the 1983 final rule. October Op. at 14. Former 30 CFR 784.20(d) required the subsidence control plan to contain:

> A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measure as—
>
> (1) The results of pre-subsidence survey of all structures and surface features which might be materially damaged by subsidence.
>
> (2) Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

OSM deleted former 30 CFR 784.20(d) from the 1983 final rule, in part, to avoid unnecessary duplication. *See* 47 FR 16605 (April 16, 1982). The existing 1983 rule requires a premining survey, "which shall show whether structures or renewable resource lands exists * * * and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands." 30 CFR 784.20. OSM, therefore, considers the pre-subsidence survey requirement of former § 784.20(d)(1) redundant.

OSM also deleted 30 CFR 784.20(d)(2) (1979) which required a description of monitoring, if any, near structures or other features to measure the degree of probable subsidence damage to such structures or features. Section 784.20(d)(5), adopted in 1983, retains the substance of former 30 CFR 784.20(b)(3)(v) of the 1979 rule and requires a detailed description of monitoring, if any, to detect the commencement of subsidence and the degree of subsidence and measures to be taken by the operator to prevent or reduce material damage. The new rule focuses on the prevention of subsidence and material damage. Accordingly, although the 1983 rule eliminated the language of former § 784.20(d)(2), the current rule continues to require a detailed description of subsidence control measures to prevent or minimize subsidence, including monitoring where appropriate. The 1979 rule, which contained the qualifying phrase "if any" did not impose an absolute monitoring requirement near structures. OSM believes the 1983 rule essentially provides the same degree of discretion as the former rule. Comments are requested on this issue time.

The Court was of a preception that the need to monitor subsidence near structuress is linked to the issue of whether operators must restore structures materially damaged by subsidence. *In Re: Permanent (II), supra,* October Op. at 14. In this regard, commenters are urged to consider whether a more specific requirement for monitoring subsidence near structures is required or whether the monitoring provision of § 784.20(d)(5) is sufficient. At this time, OSM believes that the monitoring provision contained in § 784.20(b)(3)(v) is adequate, regardless of whether the obligation to repair structures is governed by State law.

IV. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule requiring submittal to the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The determination was made previously in June 1983 in connection with the earlier adoption of this rule and continues to be valid. *See* 48 FR 24649 (June 1, 1983).

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This too is a continuation of a determination made in June 1983. *See* 48 FR 24649 (June 1, 1983).

National Environmental Policy Act

OSM has determined that the proposed rule is covered adequately by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM-EIS-1: Supplement," and that the preparation of any additional environmental documents under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), is not required.

List of Subjects in 30 CFR Part 817

Coal mining, Environmental protection, Underground mining.

Accordingly, it is proposed that 30 CFR Part 817 be amended as set forth below.

Dated: April 26, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

1. The authority citation for Part 817 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 817.121, paragraph (c)(2) is revised to read as follows:

§ 817.121 Subsidence control.

* * * * *

(c) The operator shall—* * *

(2) To the extent required under State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable preminum-prepaid insurance policy.

* * * * *

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federal register

Monday
July 8, 1985

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 215

Subsistence Taking of North Pacific Fur Seals; Emergency Interim Rule and Request for Comment

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 50705-5105]

Subsistence Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and request for comment.

SUMMARY: The NMFS issues and requests comment on an emergency interim rule regarding the subsistence taking of North Pacific fur seals (*Callorhinus ursinus*) by Indians, Aleuts, and Eskimos who live on the Pribilof Islands. This rule places restrictions upon the subsistence and handicraft taking of fur seals allowed under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, or alternatively under the Fur Seal Act (FSA), 16 U.S.C. 1151, and provides that the harvest may be suspended once the subsistence needs of the Pribilovians have been satisfied. Additionaly, technical changes are made to update the regulations and bring them into conformity with the 1983 amendments to the FSA. Lastly, the NMFS states its intention to propose a permanent rule by September 30, 1985, and requests comment on the alternative approaches.

EFFECTIVE DATES: This emergency rule is effective July 3, 1985; the expiration date will be published in the **Federal Register**. Comments on this rule must be received on or before July 23, 1985. Comments on the rulemaking approach that should be followed in promulgating a permanent rule must be received by August 7, 1985.

ADDRESS: Comments should be addressed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. A copy of the environmental assessment for this rule is available from the Office of Protected Species and Habitat Conservation from the same address.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202-634-1792.

SUPPLEMENTARY INFORMATION:

Background

Since 1957, a harvest of fur seals on the Pribilof Islands has been conducted under the authority of the Interim Convention on Conservation of North Pacific Fur Seals (Convention). The parties to the Convention are the United States, Canada, Japan, and the Soviet Union. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976, and 1980. Prior to the present Convention, harvests were conducted pursuant to the 1911 Convention for the Preservation and Protection of Fur Seals. The 1911 treaty was interrupted prior to World War II by the withdrawal of Japan, but the Pribilof Islands seal herd was protected between 1941 and 1957 by a provisional agreement between the United States and Canada.

Under the terms of the 1980 extension of the Convention, the Convention expired on October 14, 1984. On October 12, 1984, the parties to the Convention signed a protocol that, upon acceptance by all four parties, would extend the Convention until October 13, 1988. Japan, Canada, and the Soviet Union have ratified the 1984 protocol. On March 20, 1985, the President transmitted the protocol to the Senate, requesting its advice and consent regarding ratification. On June 28, 1985, the Senate adjourned until July 8, 1985, without taking action on the protocol. Although action on the protocol is expected in the near future, it will not occur before July 8, 1985, the date on which the 1985 fur seal harvest is scheduled to begin.

At its April 1985 meeting in Tokyo, the North Pacific Fur Seal Commission (Commission) recommended that up to 22,000 subadult male fur seals be commercially harvested on St. Paul Island in 1985. Additionally, the Commission recommended that a subsistence take of up to 329 fur seals be allowed on St. George Island. Under section 108 of the FSA, 16 U.S.C 1158, the Secretary of State, with the concurrence of the Secretary of Commerce, is authorized to accept or reject, on behalf of the United States, recommendations made by the Commission. The Secretary of State, with the concurrence of the Secretary of Commerce, will be advising the Commission that given the present status of the Convention as it relates to the United States and given the continuing deliberations of the United States Senate on a Resolution of Ratification, it would not be appropriate to accept or reject the Commission's April 1985 recommendations.

The subsistence needs of the Pribilovians have traditionally been met from seals taken in the commercial harvest since the level of the commercial harvest historically had exceeded the estimated subsistence needs of the islanders. This is because the level of the commercial take is set by a biological determination of the number of subadult male fur seals in the population which exceeds that necessary for meeting the full reproductive potential of the herd. In contrast, the level of the subsistence harvest of fur seals is dependent on the subsistence needs of the Pribilovians, but can be regulated as is necessary for the conservation, management, and protection of the population.

A limited subsistence take of fur seals has been authorized on St. George Island, but has been minimized to accommodate fur seal population research. The resultant shortfall in meeting the St. George residents' subsistence requirements has been offset by providing them with meat from the St. Paul commercial harvest.

Applicable Laws

Two statutes are potentially applicable to the taking of fur seals on the Pribilof Islands absent the Convention, the MMPA and the FSA. Both statutes provide for the subsistence taking of fur seals by Alaskan Indians, Aleuts, and Eskimos, but their provisions are not identical. The interplay between the two statutes is such that no clear determination can be made as to which of the competing subsistence regimes should be given precedence.

Section 101(b) of the MMPA, 16 U.S.C. 1371(b), provides that marine mammals may be taken by any Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) Is for subsistance purposes; or

(2) Is done for the purposes of creating and selling authentic native articles of handicrafts and clothing . . .; and

(3) In each case, is not accomplished in a wasteful manner.

Notwithstanding this provision, the Secretary of Commerce may prescribe regulations to limit the taking of marine mammals by Alaskan Natives if he determines the species to be depleted. Any regulations issued under the MMPA to restrict the native taking rights must be promulgated by formal, on the record, rulemaking after an opportunity for an agency hearing.

Subsistence is defined under the MMPA regulations at 50 CFR 216.3 as

The use of marine mammals taken by Alaskan natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

The FSA provides for the subsistence take of fur seals under section 103, 16 U.S.C. 1153. Under the terms of section 103(a)

> Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals [if] . . . the seals are taken for subsistence uses as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), and only in canoes . . . propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms.

It is arguable that this section does not apply to the Pribilovians since they have harvested fur seals on land for nearly 200 years and have not "hitherto practiced" canoe based hunting.

Section 103(b) of the FSA states that—

> Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State. . . .

No such limitations on the subsistence harvest rights of the Pribilovians have been recommended by the Commission and accepted by the Secretary of State.

Subsistence purposes allowed pursuant to section 109(f)(2) of the MMPA differ slightly from the permissible takings authorized by MMPA section 101(b). Section 109(f)(2) defines "subsistence uses" as—

> The customary and traditional uses of rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicrafts articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption.

Section 101(b) allows the taking of marine mammals for the creation of handicrafts and clothing for sale, whereas section 109(f)(2) only permits handicraft articles to be made if the marine mammals were initially taken for consumption.

The definition of subsistence contained in the regulations which implement section 101(b) of the MMPA allow for marine mammal parts to be used by anyone who depends upon the taker to provide them with subsistence. In contrast, section 109(f)(2) allows personal or family consumption, or barter, or sharing for personal or family consumption.

Section 105(a) of the FSA empowers the Secretary of Commerce to "prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands . . . as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population. . . ." It is under this broad authority that these regulations are issued whether the details of the subsistence harvest are governed by the native exception of the MMPA or the subsistence provisions of the FSA.

Need for Emergency Regulations

The Pribilof Island fur seal population is currently declining at the rate of 6.5 percent annually and is below levels which would result in maximum productivity. Extensive research conducted by the parties to the Convention indicates that a harvest of females, pups, or harem bulls could have a disasterous effect on the already declining fur seal population. One of the suspected causes of the population decline observed during the 1970s is the female harvests which occurred between 1956 and 1968. In contrast, it is believed that a harvest of subadult males at levels which allow for the future reproductive needs of the population will not have a negative impact on long term population trends.

As long as the native taking is unregulated, the harvest of fur seals for subsistence purposes is unrestrained. Without this emergency interim rule, the age and sex classes of fur seals that may be taken would not be limited. Females, pups, and harem bulls would be subject to harvesting as well as the subadult male fur seals that have been the sole target of the commercial harvest for the past 16 years. Absent this regulation, the harvesting would not be limited in time and place, but could continue as long as seals were available at any location where they congregate. Also, firearms could be used for a subsistence hunt without the restrictions contained in this rule.

This rule provides harvest restrictions to ensure that none of the haulout areas of the bachelor males is overharvested. Hauling grounds on St. Paul Island may be harvested only once each week. Since, at any one time, many of the subadult male seals are away from the islands and feeding at sea, the rotation of harvest sites is intended to allow a sufficient number of young seals to escape the harvest to return to breed in later years.

Under this emergency rule, only taking by traditional havesting methods is allowed. These methods have been determined to be painless and humane by a number of prominent veterinarians, including the Panel on Euthanasia of the American Veterinary Medical Association. By restricting the harvest to traditional techniques, taking will be humane and it is believed that the disruption of the fur seal rookeries will be minimized and that the risks of mistakenly taking female seals will be reduced.

The longstanding fur seal research program would be jeopardized without the provisions of this rule. It is this scientific program which is seeking the causes of the observed decline in the fur seal population. If an unrestricted harvest is permitted on St. George Island, much valuable data providing insight into the possible effect of the harvest and other information on the population decline would be lost.

As the Environmental Impact Statement on the Convention (EIS), issued in February 1985 states at p. 15,

> Regulation of the take in terms of season, sex and length limits and killing techniques, ensures that only those seals not needed as replacements for the breeding stock are taken, and that the harvest is carried out in the most humane way possible without undue stress to the animals.

Pursuant to their rights under the native taking provisions of either the MMPA or the FSA, the Pribilovians have indicated their intent to begin harvesting fur seals on July 8, 1985. Because of the potentially disastrous effects of an unrestrained harvest on the fur seal population and the disruption of a valuable scientific research program, the Assistant Administrator for Fisheries has determined that it is essential to have these regulations in place by July 8.

As it was not known that the Senate would fail to act on ratification of the protocol before the scheduled start of the harvest, it was not possible previously to issue these regulations. In light of the imminent harm which is likely to befall the fur seal population in the absence of this rule it is impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these regulations, under the provisions of 5 U.S.C. 553(b) and (d).

If the MMPA alone, rather than the FSA, were the appropriate vehicle for regulating the 1985 harvest of fur seals, NOAA would be still compelled to issue these regulations under the general authority of section 105(a) of the FSA. Any limitations of the harvest under the terms of MMPA section 101(b) require promulgation through formal rulemaking. Although formal rulemaking procedures may be expedited, regulations could not possibly be in place to manage this year's harvest.

Discussion of Regulatory Provisions

Definitions. Several definitions are added to § 215.2 to accompany the

substantive regulatory changes of other sections. Also, the definition of "director" and "convention" are deleted since the former term is obsolete and the latter is defined in the FSA. The most important definitional additions are those for "subsistence", and "wasteful manner". The definition of "wasteful manner" is functionally identical to that for the same term used in the MMPA regulations at 50 CFR 216.3. The only modifications are the restriction of the definition to the Pribilof Islands and to the taking of fur seals and a change to conform to the definition of subsistence used in this rule. The definition of subsistence is taken from section 109(f)(2) of the MMPA. Definitions also are added for "Assistant Administrator", "handicraft articles", "Pribilovians", and "Protocol".

Conforming provisions. The penalty provisions of § 215.3 are amended to bring them into conformity with changes made to the enforcement section of the FSA in 1983. This is merely a technical amendment and no discretion is exercised in its adoption.

Sections 215.11, 215.12, and 215.13 are amended to reflect a nomenclatural change in the structure of the NMFS. The title of Director has been replaced by that of Assistant Administrator. To avoid the confusion which may result from having dual titles for the same position in the regulations, the regulations are updated to conform to current practice.

Subsistence Harvest of Fur Seals

Section 215.31 states the general conditions under which fur seals may be harvested by Pribilovians. The MMPA management scheme of section 109 (f)(2), as referenced in section 103 of the FSA, is adopted in this rule. Its definition of subsistence provides the most harmonious resolution of the conflicting provisions of the two acts and is more restrictive. Under this rule permissible takings must be for subsistence purposes as defined in section 109(f)(2) of the MMPA. Subsistence under this rule includes the customary and traditional use of fur seals for food, shelter, fuel, clothing, tools, or transportation. Subsistence purposes also include use of seal parts for barter or sharing for personal or family consumption. Additionally, handicraft articles may be made and sold if they are fashioned from nonedible byproducts of marine mammals taken for personal or family consumption.

In adopting this definition, the NMFS intends to allow seals to be transferred to other Alaskan Natives to the extent such transfers have traditionally been done if the recipients will put the seal part to a subsistence use. Transfers of this type are particularly important under the terms of this rule. To provide for the continuation of important scientific research which is designed to yield data essential to the management and conservation of fur seals, the harvest on St. George Island is limited to 329 seals, a number below any credible estimate of that island's subsistence needs. So as not to place unreasonable subsistence limitations on the St. George Islanders, provisions are made whereby they may obtain fresh meat from St. Paul Island. This rule provides that seal meat may readily be transferred from harvesters on St. Paul Island to St. George natives.

Nonedible byproducts of fur seals taken for personal or family consumption may be used for making traditional and customary handicrafts articles. As far as the NMFS is aware, no tradition of creating such items exists on the Pribilof Islands. Under the definition of handicraft articles in § 215.2(c) of this rule, items which may be created and sold under this authority must have been commonly produced on or before October 14, 1983, must be composed in some significant respect of natural materials, and must be significantly altered from their natural form. It should be emphasized that this authority does not give the Pribilovians carte blanche to establish a handicrafts industry. Before sales are allowed under this provision, the Pribilovians should make a showing that any handicraft articles that they plan to make and sell were customarily produced prior to October 14, 1983, and otherwise fit within the regulatory definition.

Perhaps the most difficult provision of this rule to apply, and undoubtedly the most controversial, is § 215.31(c) which requires that any takings may not be accomplished in a wasteful manner. There are three facets to the definition of the term "wasteful manner". First, it means any taking which is likely to result in the killing of fur seals beyond those needed for subsistence purposes. Second, wasteful manner includes takings which result in the waste of a substantial portion of the fur seal. Lastly, it means the employment of a taking method which is not likely to assure the killing and retrieval of the fur seal.

The harvesting method employed by the Pribilovians has been shown to be a very effective means of taking fur seals that virtually guarantees that the targeted seals will be killed and retrieved. Provided that the traditional harvesting techniques are followed, the provisions of the last prong of the wasteful manner definition is satisfied.

In order to determine if taking is wasteful under the first criterion, the level of taking which is necessary to meet the subsistence and handicraft needs of the Pribilovians must be established. Also, it should be noted that the second standard of wastefulness closely relates to this determination. As part of accurately estimating subsistence needs, one must have some idea of what portion of a fur seal is reasonably usable for subsistence purposes. These determinations are crucial to the operation of this rule since the Assistant Administrator is authorized by § 215.32(a) to suspend the harvest when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

Since the commercial harvest of fur seals on the Pribilof Islands has historically exceeded the subsistence needs of the Pribilovians, no accurate record exists of the extent of that need. Whereas the levels of the commercial harvest have been documented each year, no such figures are available concerning the eventual fate of non-commercial seal parts. The excess availability of seal carcasses for subsistence has resulted in the selective use of prime seal meat portions and the discard or other use of less desirable parts.

Although the NMFS has no data on the amount of seal meat actually consumed by Pribilovians, estimates may be derived from a variety of historical records (summarized in Veltre and Veltre, 1983), from extrapolations based on certain subsistence use data recently recorded for St. George Island, and from testimony and written reports provided by contemporary Pribilovians. Two assumptions have been used in the following discussions of subsistence estimates: (1) That the current *native* population is 483 on St. Paul Island and 153 on St. George Island (U.S. Bureau of Census, 1980); and (2) that a subadult male fur seal dresses to 25 pounds of meat. *See* Hearings before the Committee on Expenditures in the Department of Commerce, "Investigations of the Fur Seal Industry," 63rd Cong. 2d Sess. (1914) at 514. It should be noted that the population figure for the Pribilofs that is used in these calculations does not include Alaskan Natives who are not permanent residents but who have traditionally shared in the meat from the harvests. Thus, the resultant estimates

may, to some degree, understate subsistence needs.

In one of the earliest discussions of subsistence needs, Elliot (1881) made the following observation concerning Pribilovians on St. Paul Island:

(T)hey consume on an average fully 500 pounds a day the year round; and they are, by the permission of the Secretary of the Treasury, allowed every fall to kill 5,000 or 6,000 seal pups, or an average of 22 to 30 young "kitickie" for each man, woman, and child in the settlements. The pups will dress 10 pounds each. This shows an average consumption of nearly 600 pounds of seal-meat by each person, large and small, during the year.

If 600 lbs. of seal meat per person per year is still required for subsistence purposes then 15,264 seals, would be required annually. (600 lbs. x 636 people/25 lbs. per seal.) Alternatively, Osgood *et al.* (1914) found that "the total amount of seal meat needed for one native for a year is 17.5 carcasses. This amounts to not more than one pound of meat free of bone per day for each person." This equates to 11,130 seals to feed a native population of 636. (17.5 carcasses per person x 636 people.)

If seal meat is the sole source of animal protein, however, there is some evidence that one pound per person per day may be insufficient. A recent article in the Arctic Policy Review (January 1985, pp. 5–8) noted that 1.2 pounds of whale meat is needed to satisfy daily animal protein requirements of Eskimos of the far north. Thus, if the nutritional value of seal meat is equivalent to that of whale meat, approximately 21 carcasses per person may be the necessary subsistence take, using Osgood's figure that 17.5 carcasses yields one pound of meat per person per day. This higher estimation of nutritional needs leads to a subsistence harvest of 13,356 animals. (21 carcasses per person x 636 people.)

Also in support of a higher subsistence need is a statement made by Mr. George Clark in 1914. He stated that "a ration of a little over 1 pound of meat a day through the year [was] a ridiculously small allowance." *See* Hearings before the Committee on Expenditures in the Department of Commerce, "Investigation of the Fur Seal Industry," 63rd Cong. 2d Sess. (1914) at 477.

Yet another historic estimate can be drawn from the harvest records of 1912–1917. During this period, the commercial harvest was suspended and only a taking for food was allowed. The average number of seals taken per year throughout these years for "subsistence" was 4,581. The Aleut population during this period averaged 309 for St. Paul and St. George Islands combined. If that rate of taking is extrapolated, the 1985 subsistence need is 9,429. (4,581 seals/309 residents x 636 present residents.) In using this calculation, one should bear in mind the contemporary statement by Mr. Clark that 5,000 seals is an inadequate allowance to meet the food demands of 300 island residents.

Limited data exist on the use of fur seal meat for food by contemporary Pribilovians on St. George Island. Since 1973, the St. George seal harvest has been restricted to about 350 seals annually. However, St. George residents have been allowed to collect additional meat from the harvest on St. Paul to satisfy their subsistence needs. In 1984, for example, 3,200 pounds of fresh seal meat and 3,000 pounds of frozen meat were shipped to St. George Island. This is equivalent to 248 seals (6,200 lbs./25 lbs. per seal), assuming no selection for certain more desirable cuts of meat. However, Pribilovians are known to prefer certain seal parts, such as foreflippers (Veltre and Veltre, 1983). In 1980, for example, the approximately 8,500 pounds of seal meat shipped to St. George Island reportedly included 2,680 flippers (from 1,340 seals). The addition of 350 seals taken on St. George that year results in a St. George subsistence estimate of 1,690 seals. If 1,690 are required by the 153 residents of St. George then about 5,335 are needed on St. Paul Island, for a total need of 7,025 seals. (1,690 seals x 483 people on St. Paul/153 people on St. George.) Alternatively, a subsistence need on St. George Island of 3,000–4,000 has been claimed by island residents (letter to Carmen Blondin from Iliodor Philemonof, February 27, 1984). This estimate is the basis for the 12,000 annual need estimate presented in the EIS at 37.

Veltre and Veltre (1983) report a rough estimate provided by the Tanadgusix Corporation that six kilograms per week is the amount of fur seal consumed per household on St. Paul. They conclude: "Thus, about 30,000 kg of seal meat are used in St. Paul each year, or about 60 kg per person per year." Using assumptions described earlier, this figure equates to 3,358 seals needed annually. (60 kg. x 2.2 lbs. per kg. x 636 people/25 lbs. per seal.) This estimate, of course, assumes a 100 percent utilization of available meat, rather than selection of only certain parts for consumption.

In testimony before the Senate Committee on Foreign Affairs (June 13, 1985), St. Paul Privilovians provided an estimate based upon a house to house survey on the Islands, that 15,170 seals are required to meet subsistence needs on both islands. This figure is presumed to supply sufficient prized seal parts, including flippers, hearts and livers, to satisfy the cultural needs of the Pribilof households.

According to Pribilovian representatives, satisfying subsistence needs on the islands will be particularly important this year. Because the NMFS, pursuant to the 1983 Fur Seal Act amendments, has withdrawn most financial support for and employment of the Pribilovians, fur seal meat may be more important than in previous years. Families may be expected to eat more, rather than less, seal meat in the winter and spring of 1985–1986 than they have in the recent past. In addition, the use of freezing facilities allows more seals to be used than in past years when preservation was by salting, which necessarily limited seal intake. On the other hand some of the estimates based upon historical information may be excessive since food sources other than those available in the past are currently utilized and patterns of seal meat usage may have been significantly altered.

Under the terms of this rule, not only must the subsistence harvest not exceed the subsistence needs of the Pribilovians, but there must be substantial use made of each seal taken. Because of the wide range of the estimates of subsistence need (3,358 to over 15,000), this element of the "wasteful manner" definition takes on added importance. Since no one target number may be set for the subsistence needs, the NMFS believes that the best way to ensure that the harvest is accomplished in a non-wasteful manner is to monitor the use of those seals which are taken.

The NMFS representatives that will be on the Pribilof Islands during the harvest will collect three types of information to aid in making the findings required by § 215.32(a). Each day it will be noted how many seals are killed. Then, with the cooperation of the Pribilovians, the NMFS officials will weigh the total amount of meat taken from the carcasses for subsistence uses. At the end of each day's harvest, a survey will be made of the remaining carcasses to see that substantial utilization has been made of each animal taken. Substantial use of a carcass will mean that it has been dressed out and that the front flippers, shoulders, and most other readily obtainable and utilizable tissues and organs have been removed for subsistence uses. If this monitoring program indicates that the carcasses are not being fully utilized or suggests that the subsistence needs of the islanders

have been satisfied, the Assistant Administrator intends to exercise his authority under § 215.32(a) to suspend the harvest.

Additional research will be conducted to assist in more accurately estimating subsistence needs. During the period of the harvest, an unbiased estimate of the average percentage of utilization of seal carcasses will be made. Based upon a random sample of no less than 25 fur seals, the following data will be collected:

1. The weight of the entire animal immediately following exanguination,
2. The weight of the pelt with blubber still attached,
3. The weight of the organs and tissues removed for food purposes, and
4. The weight of any additional carcass parts that are removed.

Section 215.32(b)(1) Provides that only traditional methods of harvesting may be used to take fur seals. These methods consist, in part, of organized drives of subadult male fur seals from the haulout sites to killing fields located some distance inland. Drives are conducted only in the early morning hours when the temperature is low and the stress placed upon the seals in minimal. Once at the killing fields, the driven animals are separated into smaller groups and selected individuals are stunned by a sharp blow to the head with a long club. The stunning is followed immediately by exsanguination.

Limiting the harvest to the use of traditional methods will ensure that humane methods are used, will minimize the disruption to rookeries which may result from other methods of taking, and will lessen the risk that female seals will be taken. Since the discontinuation of the female harvest in 1968, this method of harvesting has resulted in an accidental taking of females well below one percent of the total take.

Section 215.32(b)(2) clarifies that only subadult male fur seals may be taken. The Scientific Committee of the Commission has recommended that only this component of the fur seal population be harvested. The rule specifies that no adult fur seals or pups may be taken. Because of difficulties in distinguishing between immature male and female fur seals, the rule provides for the occasional accidental taking of a subadult female fur seal which may arise during the harvest. Intentional taking of subadult females, however, is not allowed.

The integrity of NOAA's research effort on fur seals will be maintained only if the traditional harvesting methods are followed. The fur seal research program has yielded much valuable data necessary for the management and conservation of the fur seal, and a major goal of the program is to determine the cause of the continuing decline in the fur seal population.

Assuring that the harvest of North Pacific fur seals is conducted consistently from year to year is important for the quantity and quality of research in several ways. The harvest is currently the only source of information available for estimating the mortality rates of juvenile males on St. Paul Island. Data from the harvest have been used to monitor the rate of entanglement in debris and to determine body weight, body length, tooth size, levels of toxic substances and changes in the age structure of the male portion of the population. These data are also used to assess the status of the population, to monitor population trends, to evaluate rates of population interchange between the island and to seek explanations for the observed dynamics of the population. The harvest has also been used to retrieve tags applied for various research purposes.

To insure that new data are comparable to existing data and not confounded by procedural changes, it is advisable to maintain as much continuity in the harvest methods as possible. General features of the harvest such as time of day, length of season, beginning and ending dates, numbers of rounds, and driving methods, as well as other aspects of the harvest procedures, should remain constant over time in order to enable the comparison of current conditions with historic conditions. It is important, in this regard, that the order of harvest rounds remain unchanged from year to year, although the harvest should be started on a different haulout site each year. Where possible, every effort should be made to ensure that the specific procedures of the harvest follow historic practices.

This rule seeks to accommodate the research requirements to the extent possible. The schedule that would have been followed had there been a commercial harvest this year is incorporated into the regulations at § 215.32(b)(3). It should be stressed that this rule authorizes only the subsistence taking of fur seals even though the methods and schedule employed are derived from the commercial harvest.

Although not specified in the regulations, the following practices are considered to be encompassed by the phrase "traditional harvesting methods." Animals should be arranged in rows for scientific sampling, and certain numbers of living animals should be made available for tagging and release by research scientists as consistent with previous practices. Every attempt should be made to achieve a proportional harvest that reflects the relative abundance of 2, 3, 4 and 5-year olds in the population; no age class selectivity should be made. An age-neutral harvest is necessary for estimating survival rates, one of the most important pieces of information produced by the harvest generated research.

Aside from research motives, the commercial harvest schedule has been adopted to avoid an unacceptable taking of female fur seals. Under this rule, no fur seals may be taken on St. Paul Island after August 5, 1985. After approximately the first week in August, immature fur seals begin to arrive on St. Paul Island in significant numbers. Also, the harem structure breaks down in early August and many females begin using the haulout areas. Extending the harvest period would likely result in a marked increase in the accidental take of female seals. As Illustrated by the population decline which followed the female harvests of the 1950s and 1960s, any increase in the taking of females is likely to have a detrimental effect on the fur seal population.

The provisions applicable to the St. George Island harvest are drawn from past practice and the recommendations of the Commission. They are incorporated into this rule primarily to safeguard the research program which has been conducted on the Pribilof Islands since 1973. So as not to jeopardize this research, which compares the dynamics of harvested and unharvested populations, it has been recommended that the harvest level on St. George not exceed 329 animals. As with St. Paul Island, only subadult males may be taken. Restrictions are also placed on the location of drives and number of seals that may be taken per day.

The harvest restrictions placed upon St. George Island are strict and do not allow its residents to take enough fur seals to satisfy their subsistence requirements. It should be noted, however, that this allotment is consistent with the harvest levels that have been permitted on St. George since 1973. To mitigate the burden placed on St. George residents, the Department of Commerce will provide free air transportation between St. George and St. Paul Islands at least once a week throughout the duration of the St. Paul harvest to allow St. George residents to obtain additional quantities of fresh meat for subsistence purposes. This service was provided during the 1984 harvest and appeared to satisfy the needs of the St. George natives.

Section 215.33 governs the disposition of fur seal parts to any person other than an Alaskan Native. Fur seal parts, under this rule may be transferred from the taker to other Alaskan Natives in accordance with section 109(f)(2) of the MMPA.

There are only three situations in which fur seal parts may be transferred or sold to anyone other than an Alaskan Native. Parts that have first been transformed into an article of handicraft may be sold to non-natives if they have been fashioned from the nonedible byproducts of seals taken for a subsistence purpose. Skins that have been retained from the subsistence take for conversion into handicrafts may be transferred to a registered tannery for processing, as long they are returned directly to the Pribilovian from whom they were obtained. Skins from fur seals that were taken for subsistence purposes, if not used for that purpose, may be transferred to the United States Government which will hold the skins in storage pending a final determination of the disposition.

Given the fact that the United States Senate has not yet acted finally on a resolution of ratification, the Convention is not presently in force. Were the Senate to give its advice and consent to the Protocol extending the Convention, the obligations which the United States has had under the Convention would be rejuvenated. The principal obligations stated in an abbreviated fashion are:

1. Coordination of scientific research and cooperation in investigating fur seal resources;
2. Prohibition of pelagic sealing by any person or vessel subject to U.S. jurisdiction;
3. Prohibition of trade in fur seal skins taken in violation of the Convention; and
4. Delivery to Canada and Japan of 15 percent each of the fur seal skins taken under the recommendations of the Commission.

The Commission's recommendations are based upon the findings of the Scientific Committee of which U.S. scientists are active participants. The United States has consistently taken the position that it can accept or reject the recommendations of the Commission, pursuant to section 108 of the Fur Seal Act Amendments of 1983, 16 U.S.C. 1158. If the United States were to reject the Commission's recommendations it is the consensus of the Parties that there is a duty to consult with the other Parties to the Convention. Since the Convention is under active consideration by the United States, the U.S. Government has not been in a position to accept or reject the recommendations of the Commission.

At this juncture it would be inappropriate to assume that the Senate will not pass a resolution of ratification. However, while the Protocol is pending advice and consent in the United States Senate, no commercial harvest will be conducted. Even so, it appears that a substantial number of fur seals will be harvested to fulfill the subsistence needs of the Pribilof Islanders, and further that it would be inappropriate to discard the skins from the seals killed for subsistence purposes. What use those skins will be put to at a later date—whether for use in native Alaskan handicrafts or other subsistence uses, or to satisfy rejuvenated obligations under the Convention—is not a matter which needs to be determined immediately. It is appropriate, however, to treat the skins in such a manner that none of the various options are foreclosed. Comments are invited on this subject.

Certain uses of fur seal parts now in existence incidental to the commercial harvest would not be allowed under this regulation. No part of a fur seal may be sold to a non-native unless it is a nonedible byproduct of a seal taken for personal or family consumption that has first been converted into an article of handicraft as defined in § 215.2(d). For example, the bacula of male seals (sealsticks) cannot be sold as aphrodisiacs and excess seal meat cannot be converted into dog food.

The Pribilovians are not required to transfer skins to the U.S. Government but may do so to assist the U.S. in meeting treaty obligations which may be resurrected. Before the skins can be stored for the U.S., initial processing, including removal of blubber, washing, soaking in brine, salting, and packing for storage, must be done. In acknowledgment of this additional effort as well as special accommodations for scientific research, agreements may be entered into pursuant to section 205(F) and 207 of the FSA.

No reporting requirements are placed upon the Pribilovians under this rule. However, § 215.34 requires those who take fur seals to cooperate with NMFS representatives in compiling scientific information and information regarding the extent of taking and uses to which seal parts are being put. The compilation and analysis of this information is essential to the Assistant Administrator's monitoring of the harvest and will be used to determine the point at which subsistence needs have been satisfied. This data may also be used as evidence that the harvest is or is not otherwise being conducted in a wasteful manner.

Other than the portions of this rule which make technical or nondiscretionary amendments not subject to notice and comment rulemaking under 5 U.S.C. 553, this rule is only interim in nature. Pursuant to § 215.35, Subpart D will cease to have effect once the emergency has passed, either when permanent regulations are promulgated or when the protocol enters into force.

If no action is taken by the Senate to ratify the protocol it will be necessary to issue permanent regulations to replace this interim emergency rule. Even if the protocol is ratified it may be necessary to promulgate such regulations, depending upon the terms of the ratification.

Arguments can be made that the FSA or the MMPA is the appropriate authority under which to regulate the subsistence taking of fur seals. In the absence of a functioning Convention, it is not clear what force should be afforded various provisions of the FSA. Some section obviously have an authority independent of the Convention, others may not.

The provisions of section 113(a) of the MMPA further confuses the issue of determining which statute should govern the subsistence harvest. Section 113(a) states that the provisions of the MMPA—

> Shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals.

If it is determined that section 113(a) is inapplicable to the current situation, the competing provisions of the FSA and the MMPA must otherwise be reconciled.

Before issuing proposed regulations for the long-term management of a subsistence harvest of fur seals, NOAA, in consultation with other Federal agencies, will make a determination of the more appropriate authority under which to issue such a rule. Because of the complexity of the legal interplay between the statutes and the diversity of interested parties, NOAA solicits comments on this issue. Any comments which address the choice of the applicable statute for the permanent regulation of the taking of fur seals must be received by August 7, 1985.

If NOAA determines that the MMPA is the appropriate authority under which to manage the taking of fur seals, regulations will be issued in compliance with the terms of section 101(b) of the MMPA. Pursuant to that section, the subsistence or handicraft taking of fur seals may only be regulated if the

Secretary of Commerce determines the species to be depleted. The MMPA defines "depleted", among other things, to mean "any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under . . . this act, determines that a species or population stock is below its optimum sustainable population. . . ."

A status review of the North Pacific fur seal conducted pursuant to the Endangered Species Act of 1973, and published in the **Federal Register** on March 6, 1985, (50 FR 9232) contained findings on the current population status in relation to its optimum sustainable population (OSP). Since the current population is below 50 percent of the levels observed in the 1940's and early 1950's, the population is believed to be below a level which can maintain maximum net productivity, the lower bound of the OSP range as defined at 50 CFR 216.3.

Since a finding of depletion is a condition precedent to regulation under the MMPA, the NMFS, in order to facilitate issuance of permanent regulations in the most timely manner, is requesting comments on and any data relevant to the issue of depletion. Comments must be received on or before August 7, 1985.

Recognizing the interim nature of these emergency regulations, the NMFS intends to proceed with due diligence to issue permanent regulations as soon as possible. To allow the NMFS time to consider any comments received on this emergency rule or on other issues on which information is requested, and to analyze data on subsistence needs which will be developed during the 1985 harvest, the NMFS intends to issue proposed permanent regulations by September 30, 1985.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Marine Mammal Protection Act, the Fur Seal Act, and other applicable law.

The Assistant Administrator also finds that, due to the imminence of the harvest, the failure of the Senate to take action on the 1984 protocol prior to the date upon which the harvest will begin, and the likelihood that an unrestricted harvest of fur seals will occur unless NOAA acts to restrict it, good cause justifying promulgation of these rules on an emergency basis exists and also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Assistant Administrator at the address listed above. This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act. This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

References

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Veltre, D. and M. Veltre. 1983. The Northern fur Seal: A subsistence and commercial resource for Aleuts of the Aleutian and Pribilof Islands, Alaska. Paper presented at the symposium Megagauna of the Seas: Large Sea Mammal Hunting and Use Among Native Societies at the XIth International Congress of Anthropological and Ethnological Sciences, Vancouver, Canada, 20–25 August, 1983.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Island, Reporting and recordkeeping requirements.

Dated: July 2, 1985.

Carmen J. Blondin,

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

PART 215—[AMENDED]

Accordingly, 50 CFR Part 215 is amended as follows:

1. The authority citation is revised to read:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.2 is revised to read as follows:

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 215:

(a) "Act" means the Fur Seal Act, as amended, 16 U.S.C. 1151–1175.

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(c) "Fur seal" means north Pacific fur seal, scientifically known as *Callorhinus ursinus.*

(d) "Handicraft articles" means items made by an Indian, Aleut, or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which were commonly produced on or before October 14, 1983, and are composed wholly or in some significant respect of natural materials, and are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tanner registered pursuant to 50 CFR 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

(e) "Public display" means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

(f) "Pribilovians" means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

(g) "Protocol" means the 1984 Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals.

(h) "Subsistence uses" means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal for family consumption; and for barter, or sharing for personal or family consumption.

(i) "Wasteful manner" means any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a fur seal or which is not immediately followed by a reasonable effort to retrieve the fur seal.

3. Section 215.3 is revised to read as follows:

§ 215.3 Penalties.

(a) *Criminal penalties.* Any person who knowingly violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part shall, upon conviction, be fined not more than $20,000 for such violation, or be imprisoned for not more than one year, or both.

(b) *Civil penalties.* Any person who violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part may be assessed a civil penalty of not more than $10,000 for each such violation.

§§ 215.11 through 215.13 [Amended]

4. Sections 215.11, 215.12, and 215.13 are amended such that wherever the word "Director" appears it is replaced by the phrase "Assistant Administrator."

5. A new Subpart D is added to Part 215 to read as follows:

Subpart D—Takings for Subsistence Purposes

Sec.
215.31 Allowable take of fur seals.
215.32 Restrictions on taking.
215.33 Disposition of Fur Seal Parts.
215.34 Cooperation with federal officials.
215.35 Effective date.

Subpart D—Takings for Subsistence Purposes

§ 215.31 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is:

(a) For subsistence uses, and

(b) In each case, not accomplished in a wasteful manner.

§ 215.32 Restrictions on taking.

(a) The Assistant Administrator is authorized to suspend the take provided for in § 215.31 when he determines that the subsistence needs of the Probilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

(b)(1) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including organized drives of subadult male fur seals to killing fields and separation into smaller groups for selective stunning followed immediately by exsanguination.

(2) Only subadult male fur seals may be taken. Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(3) The following schedule and take limits apply:

(i) *St. Paul Island*—Any harvest of fur seals on St. Paul Island will be conducted in accordance with the following provisions:

(A) The harvest season will begin on July 8, 1985, and will consist of 19 harvest days. The harvest will terminate when seals have been harvested on 19 days, on August 5, 1985, upon the expiration of this rule, or upon suspension of the harvest by the Assistant Administrator under the provisions of § 215.32(a) whichever occurs first.

(B) A five-day per week harvest schedule will be maintained during the course of the harvest schedule season. Seals may be driven from the following haulouts according to the following schedule:

Monday—Zapadni
Tuesday—Reef
Wednesday—Northwest Point
Thursday—Polovina, Little Polovina, Lukanin, Kitovi
Friday—English Bay

(C) Only male subadult seals 124.5 centimeters or less in length may be taken.

(D) Seals with blue, yellow, or pink roto-tags may not be taken.

(E) Seals with entangling debris may only be taken if so directed by scientists studying fur seal entanglement.

(ii) *St. George Island* Any harvest of fur seals on St. George Island shall be conducted in accordance with the following provisions:

(A) Fur seals may only be taken at the east haulout area of the North Rookery. No more than two drives may be conducted per week and no more than 50 seals may be taken per day.

(B) Only subadult male seals 124.5 centimeters or less in length may be taken.

(C) The total take on St. George Island shall not exceed 329 seals in 1985. To meet their subsistence needs, air transportation between St. George and St. Paul Islands will be made available to St. George native residents free of charge at least once per week during the St. Paul harvest to allow them to obtain additional quantities of fresh meat, if needed for subsistence uses.

§ 215.33 Disposition of Fur Seal Parts.

(a) No part of a fur seal taken for subsistence uses may be sold or transferred to any person other than an Alaskan Native, as that term is defined in 50 CFR 216.3, unless:

(1) It is a nonedible byproduct which has been transformed into an article of handicraft, or

(2) It is being sent by a Pribilovian to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Pribilovian, or

(3) It is a skin from a fur seal which was taken for subsistence uses, in which case it may be transferred to the United States Government.

(b)(1) Any skins which are transferred to the United States Government will be held pending a determination of their final disposition.

(2) The United States may enter into an agreement as authorized by sections 205(f) and 207 of the Act, 16 U.S.C. 1165(f) and 1167, to ensure the initial processing of transferred skins which is required for their preservation or to provide for assistance in conducting research efforts.

§ 215.34 Cooperation with federal officials.

Pribilovians who take fur seals for subsistence uses shall, consistent with 5

CFR 1320.7(k)(3), cooperate with the National Marine Fisheries Service's representatives on the Pribilof Islands who are responsible for compiling on a daily basis the following information:

(a) The number of seals taken each day,

(b) The weight of meat taken for subsistence uses,

(c) The extent of the utilization of fur seals taken, and

(d) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(a).

§ 215.35 Effective date.

Subpart D shall cease to have effect

Upon promulgation of a permanent rule; or

Upon ratification or provisional application of the Protocol, whichever occurs first.

[FR Doc 85-16251 Filed 7-3-85; 3:42 pm]

BILLING CODE 3510-22-M

federal register

Monday
July 8, 1985

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Transportation of Federal Air Marshals; Final Rule With Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 24714; Amdt. No. 108-2]

Transportation of Federal Air Marshals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule with request for comments.

SUMMARY: This emergency regulation requires each certificate holder to whom the airplane operator security rules apply to carry Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. This regulation is needed to respond to recent terrorist activity against U.S. civil aviation. It is intended to ensure that U.S. civil aviation and U.S. citizens are not impeded by international terrorism.

DATES: Effective date of this amendment is July 8, 1985.

Comments must be received on or before August 11, 1985.

ADDRESS: Send comments on this final rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24714, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Hunter, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:

Comments Invited

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on such emergency regulations after their issuance. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before August 11, 1985, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number ." The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulting in the murder and torture of U.S. citizens is the latest of a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe and the Middle East during the 1980's. Accordingly, it has become necessary to undertake certain actions necessary to protect U.S. aviation in addition to those already mandated by Part 108 of the Federal Aviation Regulations. To that end, the Secretary of Transportation has directed the FAA to undertake immediately certain actions necessary to protect U.S. airline flights in high-risk areas and to expand the FAA Federal Air Marshal Program to the extent necessary to ensure safety aboard U.S. air carriers traveling in all threatened areas.

The purpose of this final rule is to ensure that Federal Air Marshals are used effectively and efficiently aboard those high-risk flights that the Federal Aviation Administrator determines should be protected.

Federal officers were first used in the early 1960's to combat the initial spate of hijackings of U.S. aircraft to Cuba. Following the hijacking and destruction of four airliners in the Jordanian desert in 1970, "sky marshals" were used in significant numbers on threatened domestic and international flights. After the implementation of 100 percent passenger screening in 1970, their use in large numbers was considered unnecessary. Since then these Federal officers have been used from time to time when their special understanding of aviation security was needed to fulfill an inflight security function.

There have always been certain critical elements in the effective and efficient use of Federal Air Marshals. They include ensuring that marshals will be carried aboard those flights that intelligence information indicates are seriously threatened. This sometimes requires carriage with very short notice and the "bumping" of a passenger holding a reservation. Also critical to the effectiveness of the marshal is his or her location in the passenger cabin. It is important that the marshal or marshals be able to select their seats so that they may observe and respond to any incident.

This need for access to specific flights was recognized in 1970 when the Civil Aeronautics Board (CAB) adopted a rule requiring the free transportation of these officers. That rule is currently contained in § 223.3 of Title 14 of the Code of Federal Regulations, which has been transferred from the CAB to the Department of Transportation (DOT) (50 FR 451; January 4, 1985). Section 223.3 provides that every air carrier shall carry, without charge, on any aircraft that it operates, among other persons, "security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration."

Section 223.3 has not been completely successful in meeting the need to properly position marshals. Some air carriers have denied seating to marshals to accommodate full-fare passengers. "Dead heading" marshals, who need to reposition themselves for immediate reassignment, are not expressly covered by the rule. Finally, it does not require the carrier to assign the marshal the seat he or she selects.

The Final Rule

New § 108.14 provides that each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation and public charter passenger operation specified by the Administrator. In administering the Federal Air Marshal Program, the FAA intends to provide maximum coordination with the air carriers involved. This will be done through a national coordinating center. Consistent with the specific threat to be met, as much notice as possible will be given of the flights on which marshals will be carried. It is expected that only

in an extreme emergency will it be necessary to deny a confirmed passenger transportation on a particular flight in order to carry a Federal Air Marshal.

The FAA also plans to carefully coordinate the repositioning of marshals with the air carriers. It may be occasionally necessary, however, to provide priority transportation to a marshal to position him or her for response to a specific threat condition. In such an emergency, it may be necessary to deny transportation to a confirmed passenger. The FAA will make every effort to avoid such a situation.

Sections 108.14(b) and (c) make it clear that on designated flights marshals must be carried on a first priority basis and be assigned a seat selected by the marshal. While the marshal may have some flexibility in accepting certain seating, the final decision as to seat selection must be made by the marshal.

Finally, § 108.14 restates the provision in §223.3 that transportation of Federal Air Marshals while on duty shall be without charge.

Need for Immediate Adoption

Because of the need to respond immediately to the heightened threat to aviation safety from terrorist hijacking and sabotage of international flights, I find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

Economic Assessment

Because of the emergency need for this regulation, no regulatory evaluation has been prepared. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation. For this same reason and in accordance with section 8(a)(1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable.

Because none of the certificate holders affected by this regulation is a small entity, this regulation will not have a significant economic impact on a substantial number of small entities.

Conclusion

In accordance with section 8(a)(1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security as a result of the current threat situation, this regulation is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities will be affected by the proposed rule, it is certified that, under the criteria of the Regulatory Flexibility Act, the rule will not have a significant economic impact on a substantial number of entities. A copy of the regulatory evaluation to be prepared for this project will be placed in the public docket, unless an exception is granted by the Secretary of Transportation.

List of Subjects in 14 CFR Part 108

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Law enforcement officers, Police, Security measures.

The Amendment

PART 108—[AMENDED]

Accordingly, Part 108 of the Federal Aviation Regulations (14 CFR Part 108) is amended as follows, effective July 8, 1985:

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

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. By adding a new § 108.14 to read as follows:

§ 108.14 Transportation of Federal Air Marshals.

(a) Each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled and public charter passenger operation designated by the Administrator.

(b) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on official duty, including repositioning flights.

(c) Each certificate holder shall assign the specific seat requested by a Federal Air Marshal who is on official duty.

Issued in Washington, D.C., on July 3, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85–16300 Filed 7–5–85; 8:45 am]

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Federal Register

Vol. 50, No. 130

Monday, July 8, 1985

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Daily Federal Register

General information, index, and finding aids	523-5227
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Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212.....1
27213-27408.....2
27409-27570.....3
27571-27812.....5
27813-27926.....8

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524).....27409
12523.....26963
12524.....27409
Proclamations:
5356.....26961

5 CFR

771.....26965

7 CFR

52.....26965
54.....27571
226.....26972
400.....26976
908.....27411
910.....27813
916.....27813
917.....27813
921.....27411
930.....27213
979.....26976
991.....26977, 27814
1040.....27412
1427.....26978
1435.....27413
1941.....27414
1944.....27415
1945.....27414, 27416
Proposed Rules:
Ch. X.....27003
29.....27288
51.....27004
417.....27601
920.....27288

8 CFR

316a.....27816
Proposed Rules:
103.....27289

9 CFR

318.....27573

10 CFR

9.....27214
Proposed Rules:
50.....27006

12 CFR

403.....27215
723.....27417

Proposed Rules:

561.....27290
563.....27290
571.....27290

13 CFR

121.....27418
302.....27419
Proposed Rules:
108.....27754

14 CFR

39.....26979, 27575, 27576
71.....26980
108.....27924

Proposed Rules:

39.....27009, 27012, 27601, 27602
71.....27013, 27014, 27528
75.....27014

15 CFR

19.....27577
376.....27420
399.....27420

16 CFR

13.....26981, 27578

17 CFR

288.....26981
Proposed Rules:
240.....27829

18 CFR

157.....27816
389.....27816
Proposed Rules:
35.....27604
290.....27604

19 CFR

4.....26981
142.....27816
Proposed Rules
162.....27829
177.....27831

20 CFR

200.....27222
626.....27818
627.....27818
628.....27818
629.....27818
630.....27818
Proposed Rules:
404.....27615
416.....27615

21 CFR

101.....26984
520.....27818
558.....27421, 27422
Proposal Rules:
170.....27294
201.....27016
211.....27016

357 ... 27552
514 ... 27016
559 ... 27016
561 ... 27452
1002 ... 27024

22 CFR

501 ... 27422

25 CFR

Proposed Rules:
61 ... 27456

26 CFR

1 ... 27222, 27231, 27427
602 ... 27222, 27231

Proposed Rules:

1 ... 27297, 27456, 27457
51 ... 27621

27 CFR

4 ... 27819

28 CFR

32 ... 27428

29 CFR

1952 ... 27233

Proposed Rules:

33 ... 27298
1910 ... 27307

30 CFR

Proposed Rules:
56 ... 27566
57 ... 27566
817 ... 27910
913 ... 27025
936 ... 27461

31 CFR

51 ... 26987
103 ... 27821
500 ... 27435
505 ... 27435
515 ... 27435
520 ... 27435
535 ... 27435
540 ... 27435

32 CFR

Parts 1-39 ... 26987
199 ... 26988

33 CFR

100 ... 27579
110 ... 26988, 27580
117 ... 26989, 27582
150 ... 26989
165 ... 27583
166 ... 26989
Proposed Rules:
110 ... 27622, 27623
117 ... 27026, 27029, 27624, 27832

35 CFR

101 ... 26990
103 ... 26990
121 ... 26990

36 CFR

1200 ... 27196
1202 ... 27196
1250 ... 27196

37 CFR

Proposed Rules:
1 ... 27030

38 CFR

3 ... 27584
21 ... 27825
Proposed Rules:
36 ... 27833

39 CFR

10 ... 27827

Proposed Rules:

3001 ... 27308

40 CFR

51 ... 27892
52 ... 26991, 27244-27247
60 ... 27248
61 ... 27248
86 ... 27250
600 ... 27172
Proposed Rules:
52 ... 27030, 27462
180 ... 27463
202 ... 27321
205 ... 27321
600 ... 27188

41 CFR

Chs. 1-49 ... 26987
105-63 ... 26992
201-1 ... 27142
201-2 ... 27142
201-8 ... 27142
201-11 ... 27142
201-16 ... 27142
201-20 ... 27142
201-21 ... 27142
201-23 ... 27142
201-24 ... 27142
201-26 ... 27142
201-30 ... 27142
201-31 ... 27142
201-32 ... 27142
201-38 ... 27142
201-39 ... 27142
201-40 ... 27142
Proposed Rules:
101-41 ... 27625, 27626

42 CFR

405 ... 27722
412 ... 27208, 27722
Proposed Rules:
23 ... 27465
405 ... 27469
412 ... 27469

43 CFR

Public Land Orders:
5150 Revoked in part by PLO 6607 ... 27827
5179 Revoked in part by PLO 6607 ... 27827
5180 Revoked in part by PLO 6607 ... 27827
5186 Revoked in part by PLO 6607 ... 27827
6607 ... 27827
Proposed Rules:
2800 ... 27322

44 CFR

64 ... 26993, 26994

Proposed Rules:

67 ... 27322
302 ... 27627

45 CFR

1180 ... 27584, 27586

Proposed Rules:

405 ... 27406
412 ... 27406
1620 ... 27326

46 CFR

153 ... 26996
Proposed Rules:
160 ... 27628

47 CFR

68 ... 27250
73 ... 27287, 27438
76 ... 27438
Proposed Rules:
73 ... 27629

48 CFR

7 ... 27560
15 ... 27560
19 ... 27560
34 ... 27560
52 ... 27560
504 ... 26996
533 ... 26998
552 ... 27589
553 ... 27589
570 ... 27589

49 CFR

571 ... 27451
Proposed Rules:
Ch. X ... 27031
571 ... 27032, 27632, 27633
1132 ... 27834

50 CFR

17 ... 26999
215 ... 27914
Proposed Rules:
17 ... 27637
20 ... 27638
630 ... 27470
662 ... 27470

LIST OF PUBLIC LAWS

Last List July 2, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1699 / Pub. L. 99-58

Energy Policy and Conservation Amendments Act of 1985. (July 2, 1985; 99 Stat. 102) Price $1.00

S. 413/Pub. L. 99-59

To extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance. (July 3, 1985; 99 Stat. 110) Price: $1.00

H.J. Res. 159/Pub. L. 99-60

Commemorating the 75th Anniversary of the Boy Scouts of America. (July 3, 1985; 99 Stat. 111) Price: $1.00

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Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53-209	14.00	Jan. 1, 1985
210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
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1000-1059	12.00	Jan. 1, 1985
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1120-1199	8.00	Jan. 1, 1985
1200-1499	13.00	Jan. 1, 1985
1500-1899	7.50	Jan. 1, 1985
1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	13.00	Jan. 1, 1985
200-End	9.50	Jan. 1, 1985
10 Parts:		
0-199	17.00	Jan. 1, 1985
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1-199	8.00	Jan. 1, 1985
200-299	14.00	Jan. 1, 1985
300-499	9.50	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1-59	16.00	Jan. 1, 1985
60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1985
200-1199	15.00	Jan. 1, 1985
1200-End	8.00	Jan. 1, 1985
15 Parts:		
0-299	6.50	Jan. 1, 1985
300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1985
17 Parts:		
*1-239	20.00	Apr. 1, 1985
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1985
100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
200-299	4.25	Apr. 1, 1985
300-499	14.00	Apr. 1, 1984
500-599	16.00	Apr. 1, 1985
600-799	6.50	Apr. 1, 1985
800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
*22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0-199	11.00	Apr. 1, 1985
200-499	19.00	Apr. 1, 1985
500-699	6.50	Apr. 1, 1985
700-1699	12.00	Apr. 1, 1984
1700-End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
*§§ 1.0-1.169	21.00	Apr. 1, 1985
§§ 1.170-1.300	12.00	Apr. 1, 1985
§§ 1.301-1.400	7.50	Apr. 1, 1985
§§ 1.401-1.500	15.00	Apr. 1, 1985
§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	15.00	Apr. 1, 1985
30-39	9.50	Apr. 1, 1985
40-299	18.00	Apr. 1, 1985
300-499	11.00	Apr. 1, 1985
500-599	8.00	[1] Apr. 1, 1980
600-End	4.75	Apr. 1, 1985
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1-39, Vol. I	15.00	July 1, 1984
1-39, Vol. II	19.00	July 1, 1984
1-39, Vol. III	18.00	July 1, 1984
40-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-629	13.00	July 1, 1984
630-699	12.00	July 1, 1984
700-799	13.00	July 1, 1984
800-999	9.50	July 1, 1984
1000-End	6.00	July 1, 1984
33 Parts:		
1-199	14.00	July 1, 1984
200-End	13.00	July 1, 1984
34 Parts:		
1-299	14.00	July 1, 1984
300-399	8.50	July 1, 1984
400-End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1-199	9.00	July 1, 1984
200-End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0-17	14.00	July 1, 1984
18-End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1-51	13.00	July 1, 1984
52	14.00	July 1, 1984
53-80	18.00	July 1, 1984
81-99	14.00	July 1, 1984
100-149	9.50	July 1, 1984
150-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-424	13.00	July 1, 1984
425-End	14.00	July 1, 1984
41 Chapters:		
1, 1-1 to 1-10	13.00	July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3-6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10-17	9.50	July 1, 1984
18, Vol. I, Parts 1-5	13.00	July 1, 1984
18, Vol. II, Parts 6-19	13.00	July 1, 1984
18, Vol. III, Parts 20-52	13.00	July 1, 1984
19-100	13.00	July 1, 1984
101	15.00	July 1, 1984
102-End	9.50	July 1, 1984
42 Parts:		
1-60	12.00	Oct. 1, 1984
61-399	8.00	Oct. 1, 1984
400-End	18.00	Oct. 1, 1984
43 Parts:		
1-999	9.50	Oct. 1, 1984
1000-3999	14.00	Oct. 1, 1984
4000-End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1-199	9.50	Oct. 1, 1984
200-499	6.50	Oct. 1, 1984
500-1199	13.00	Oct. 1, 1984
1200-End	9.50	Oct. 1, 1984
46 Parts:		
1-40	9.50	Oct. 1, 1984
41-69	9.50	Oct. 1, 1984
70-89	6.00	Oct. 1, 1984
90-139	9.00	Oct. 1, 1984
140-155	9.50	Oct. 1, 1984
156-165	10.00	Oct. 1, 1984
166-199	9.00	Oct. 1, 1984
200-499	13.00	Oct. 1, 1984
500-End	7.50	Dec. 31, 1984
47 Parts:		
0-19	13.00	Oct. 1, 1984
20-69	14.00	Oct. 1, 1984
70-79	13.00	Oct. 1, 1984
80-End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1-51)	13.00	Oct. 1, 1984
1 (Parts 52-99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3-6	12.00	Oct. 1, 1984
7-14	14.00	Oct. 1, 1984
15-End	12.00	Oct. 1, 1984
49 Parts:		
1-99	7.50	Oct. 1, 1984
100-177	14.00	Nov. 1, 1984
178-199	13.00	Nov. 1, 1984
200-399	13.00	Oct. 1, 1984
400-999	13.00	Oct. 1, 1984
1000-1199	13.00	Oct. 1, 1984
1200-1299	13.00	Oct. 1, 1984
1300-End	3.75	Oct. 1, 1984
50 Parts:		
1-199	9.50	Oct. 1, 1984
200-End	14.00	Oct. 1, 1984
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.