12-31-85
Vol. 50 No. 251
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federal register

Tuesday
December 31, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see [illegible] inside cover of this issue.

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Authority Delegations (Government Agencies)
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Flood Insurance
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Freedom of Information
Agricultural Stabilization and Conservation Service

Hazardous Waste
Environmental Protection Agency

Income Taxes
Internal Revenue Service

Natural Gas
Federal Energy Regulatory Commission

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Old-Age, Survivors, and Disability Insurance
Social Security Administration

Postal Service
Postal Service

Reporting and Recordkeeping Requirements
Food and Nutrition Service

Savings and Loan Associations
Federal Home Loan Bank Board

South Africa
State Department

Superfund
Environmental Protection Agency

Transportation
Animal and Plant Health Inspection Service

Veterans
Veterans Administration

Water Pollution Control
Environmental Protection Agency

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

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: January 17; at 9 am.

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

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

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 225, 226, 235 and 245

Information Collection/ Recordkeeping; OMB Assigned Control Numbers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This document makes minor technical amendments to the Child Nutrition Program regulations by removing existing Office of Management and Budget (OMB) control number paragraphs and adding a new section at the end of each part to display in chart form all OMB control numbers assigned to the sections where collection/ recordkeepng requirements are descibed. In accordance with the Paperwork Reduction Act of 1980 and the OMB regulations regarding controlling paperwork burdens on the public, any regulation which requires the collection/reporting of information must be approved by OMB and a valid OMB control number must be displayed. This document places all OMB control numbers in a single section at the end of each part rather than scattered throughout. The affected programs are the National School Lunch Program (Part 210), Special Milk Program (Part 215), Summer Food Service Program (Part 225), Child Care Food Program (Part 226), State Administrative Expense Funds (Part 235) and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (Part 245).

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 or call (703) 756-3620.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and OMB regulation 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, OMB must approve all regulations which require the collection or reporting of information by individuals, businesses and other private institutions, and State and local governments. Currently, OMB control numbers assigned to such requirements are recorded at the end of the relevant regulatory section. Additionally, regulations implemented prior to 5 CFR Part 1320, although approved by OMB, do not have OMB control numbers displayed. The purpose of this document is to display and consolidate all OMB control numbers in chart form at the end of each part.

This document relates to internal agency management and, therefore, notice and comment are unnecessary and good cause exists for making this rule effective upon publication.

Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Also, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612), and thus is exempt from the provisions of that Act.

These programs, National School Lunch Program, Special Milk Program, Child Care Food Program, Summer Food Service Program and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance under 10.555, 10.556, 10.558, 10.559, and 10.560. The programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs—Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Day Care, Food assistance programs, Grant programs—Health, Infants, Children, Surplus agricultural commodities.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Child Care Food Program, Food Distribution Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

7 CFR Part 245

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grant—Social programs, and Reporting and recordkeeping requirements.

Accordingly, Parts 210, 215, 225, 226, 235 and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2-12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751-1760, 1779, unless otherwise noted.

2. In Part 210, remove all OMB control number paragraphs throughout and add a new § 210.22 to read as follows:

§ 210.22 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
210.3(c)	0584-0327
210.5(a), (b)	0584-0006
	0584-0341
	0584-0002

7 CFR section where requirements are described	Current OMB Control Number
210.5a	0584-0006
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PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for Part 215 continues to read as follows:

Authority: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779), unless otherwise noted.

2. In part 215, remove all OMB control number paragraphs throughout and add a new §215.17 to read as follows:

§ 215.17 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
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215.5(a)	0584-0005
	0584-0002
215.5(c)	0584-0341
215.7 (a), (c)	0584-0005
215.7 (b)(2)	0584-0026
215.7(d)	0584-0329
	0584-0005
215.10 (a), (b), (d)	0584-0005
	0584-0284
215.11 (b), (c)(1), (e)	0584-0005
215.11(c)(2)	0584-0002
	0584-0341
215.12 (a), (d), (e), (g)	0584-0005
215.13(a)	0584-0005
215.13a(a)-(e)	0584-0028
215.14	0584-0005
215.14a(a)-(c)	0584-0005
215.15	0584-0005

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 803, 807, 809, 816 and 817, Pub. L. 97-35, secs. 203 and 206, Pub. L. 96-499, secs. 5, 7, 10, Pub. L. 95-627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

2. In Part 225, a new § 225.24 is added to read as follows:

§ 225.24 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
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225.5(b)	0584-0057
225.6(a)	0584-0057
225.7(k)	0584-0057
225.8(a)	0584-0017
225.8(b)	0584-0057
225.9 (a), (d), (f), (g)	0584-0057
225.9(e)	0584-0023
225.10(a)	0584-0280
225.10(b)	0584-0057
225.11(c)	0584-0041
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225.14(a)	0584-0057
225.15(a)	0584-0057
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225.18(f)	0584-0230
225.19(f)	0584-0280
225.21(a)(b)	0584-0057
225.21(b)(4)	0584-0280
225.22(b)(2)	0584-0057

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 803, 810 and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758, 1766); Sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); Sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In part 226, a new §226.27 is added to read as follows:

§ 226.27 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
226.3-226.4	0584-0055
226.6-226.10	0584-0055
226.14-226.16	0584-0055
226.23-226.24	0584-0055

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89-642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779), unless otherwise noted.

2. In part 235, a new §235.12 is added to read as follows:

§ 235.12 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
235.3(b)	0584-0327
235.4 (d), (e)	0584-0319
235.7(a)	0584-0319
235.7(b)	0584-0341
235.7(c)	0584-0319
235.8 (a), (b)	0584-0319
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235.11(b)(2)	0584-0006
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235.11(b)(5)(ii)	0584-0319
235.11(f)	0584-0319

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2-12, 60 Stat. 230, as amended (43 U.S.C. 1751-60), unless otherwise noted.

2. In part 245, remove all OMB control number paragraphs throughout and add a new §245.14 to read as follows:

§ 245.14 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
245.3 (a), (b)	0584-0026
245.4	0584-0026
245.5 (a), (b)	0584-0026
245.6 (a), (b), (c), (e)	0584-0026
245.7(a)	0584-0026
245.9 (a), (b), (c)	0584-0026
245.10 (a), (d), (e)	0584-0026
245.11 (a), (a-1), (b), (c), (d), (f)	0584-0025
245.13(a)-(c)	0584-0026

Dated: December 26, 1985.

John H. Stokes,

Acting Administrator.

[FR Doc. 85-30952 Filed 12-30-85; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 85-408]

Organization, Functions, and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service, by making a minor change in the regional structure of Veterinary Services (VS). The regional office located at Forth Worth, Texas, previously known as the South Central Regional Office is renamed the Central Regional Office.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment, and Executive Resources Program, Human Resources Division, 6505 Belcrest Road, Room 221 Federal Building, Hyattsville, MD, 20782, (301) 436-6466.

SUPPLEMENTARY INFORMATION: As a result of a comprehensive comparative study of current and anticipated staffing patterns and workload analyses levels for its regional alignments, VS has determined as part of its continuing efforts to improve the efficiency, economy, and effectiveness of its operations, coupled with the abolishment of its Western Regional Office at Reno, Nevada, and the assumption of certain North Central Regional and South Central Regional responsibilities by a newly formed Western Region, that the Regional Office located in Forth Worth, Texas, known as the south Central Region should be renamed the Central Region, such identity being commensurate with Federally mandated standard regional office locations and the general geographical area served by this particular regional headquarters.

This rule relates to internal management and, therefore, pursuant to 5 USC 553, notice of proposed rulemaking and opportunity to comment thereon are not required and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal Agency management, it is exempt from the provisions of E.O. 12291. Finally, this subject is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Authority delegations (government agencies), Organization and functions (government agencies).

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, 7 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 371.1 is amended by revising paragraph (c)(2) to read as follows:

§ 371.1 General statement.

* * * * *

(c) * * *

(2) Veterinary Services.

Laboratories

National Veterinary Services Laboratories, P.O. Box 844, Ames, IA, 50010.

Regions

Western: 317 Inverness Way South, Englewood, CO, 80112.
Northern: Building 12, GSA Depot, Scotia, NY, 12302.
Southeastern: 700 Twiggs St., Room 820, P.O. Box 560, Tampa, FL, 33601.
Central: 221 West Lancaster Avenue, Suite 310, Forth Worth, TX, 76102.

* * * * *

Issued at Washington, DC this 18th date of December 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85-30846 Filed 12-30-85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 798

[Amdt. 1]

Availability of Information to the Public

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the name and address of the Washington office of the Agricultural Stabilization and Conservation Service at which the public may request access to certain material under the Freedom of Information Act for inspection and copying. This amendment is necessary due to agency reorganization.

EFFECTIVE DATE: December 31, 1985.

ADDRESS: Information Division, ASCS, USDA, Room 3608 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jim Jamison, (ASCS) (202) 447-5875.

SUPPLEMENTARY INFORMATION: The name and address of the Washington office of the Agricultural Stabilization and Conservation Service at which the public may request access to certain materials under the Freedom of Information Act for inspection and copying is being changed due to agency reorganization.

Since the amendment includes changes in matters relating to agency organization, management or personnel, the provisions of 5 U.S.C. 553 concerning notice of proposed rulemaking, public procedure and 30 day effective date, and the provisions of Executive Order 12291 do not apply.

List of Subjects in 7 CFR Part 798

Freedom of Information.

Accordingly, 7 CFR Part 798 is amended as follows:

1. The authority citation for Part 798 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1-1.16.

2. Section 798.2 is revised to read as follows:

§ 798.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by ASCS and/or CCC at the Office of the Director, Information Division, Agricultural Stabilization and Conservation Service, Room 3608 South Building, P.O. Box 2415, Washington, DC 20013, between the hours of 8:15 and 4:45 p.m., Monday through Friday.

* * * * *

Signed at Washington, DC, on December 23, 1985.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-30764 Filed 12-30-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 619]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 619 establishes the quantity of California-Arizona navel oranges that may be shipped to market

during the period December 27 through January 2, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 619 (§ 907.919) is effective for the period December 27, 1985–January 2, 1986.

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

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

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 23, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has become weak. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

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

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

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

2. Section 907.919 Navel Orange Regulation 619 paragraph (a) through (e) is hereby added to read:

§ 907.919 Navel Orange Regulation 619.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 27, 1985, through January 2, 1986, are established as follows:

(a) District 1: 700,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 24, 1985.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–30994 Filed 12–27–85; 12:39 pm]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 563, 571, and 584

[No. 85-1155]

Finance Subsidiaries of Federal Associations; Financings Through Subsidiaries of Insured Institutions and Appraised Equity Capital

December 9, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule and request for further comment.

SUMMARY: The Federal Home Loan Board ("Board") is amending its regulations pertaining to the establishment and operation of finance subsidiaries by Federal associations. The amendments revise the current regulation to permit the use of third party intermediaries, to authorize the transfer of liabilities of a parent association to its finance subsidiary, to increase the maximum authorized amount of transfers per issuance by a finance subsidiary, and to delegate the Board's authority to grant certain waivers to an association's Principal Supervisory Agent ("PSA"). The amendments also clarify the accounting treatment of certain transactions, particularly remittances of proceeds by a finance subsidiary to its parent association. Finally, the Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is requiring all institutions whose accounts are insured by the Corporation ("insured institutions") to include in their computation of their net-worth requirements the net proceeds of certain securities issuances through subsidiaries except for an amount equal to the net proceeds from an issuance of securities: (1) Remitted in exchange for a liability issued by its parent institution or (2) collateralized by assets that are substantially duration matched to the issued securities and that will remain so matched throughout the life of the securities without active management. The Board also is requesting comment on types of preferred stock or other securities issuances in addition to collateralized mortgage obligations and pay-through bonds that effectively avoid interest-rate risk to issuing subsidiaries and their parent institutions.

DATES: Effective Date: December 31, 1985.

Comments on Additional Securities Issuances: March 3, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Attorney, (202) 377–6455, Regulations and Legislation Division, Office of General Counsel; Robert J. Pomeranz, Policy Analyst, (202) 377–6209, or Donald Bisenius, Research Economist (202) 377–6766, Office of Policy and Economic Research; or Edward Taubert, Associate Director, Policy Development, Office of Examinations and Supervision (202) 377–6484, at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Direct all questions on the application and computation of the duration matching requirement to the Office of Policy and Economic Research.

SUPPLEMENTARY INFORMATION: On July 12, 1984, the Board adopted the current finance subsidiary regulation ("current regulation"), both to recognize the incidental authority of Federal associations to establish finance subsidiaries and to ensure that the establishment and operation of these subsidiaries is in keeping with this authority and with safe and sound practices. (Board Res. No. 84–369, 49 FR 29357 (July 20, 1984)) (codified at 12 CFR 545.82). The relationship between a Federal association and its finance

subsidiary is based on the parent's ability to exercise, through the subsidiary, its own authority to issue debt and equity securities. Thus, the sole purpose of a finance subsidiary is to issue only those securities that the parent association is or could be authorized to issue, and to remit the proceeds of such an issuance (less reasonable costs) to its parent association.

The current regulation authorizes Federal associations to establish one or more finance subsidiaries ("finance subsidiary"), whose sole purpose is to issue securities that the parent association is authorized to issue directly, and requires finance subsidiaries to remit the proceeds of such issuances of securities to their parent associations. The current regulation does not relate to state-chartered insured institutions and their subsidiaries, although some state laws have authorized such institutions to create subsidiaries organized and operating in compliance with the provisions of § 545.82.

To create a finance subsidiary, the board of directors of a Federal association must authorize its establishment pursuant to a written business plan to reduce interest-rate risk and to control credit risk. An association must own 100 percent of its finance subsidiary's common stock, but a finance subsidiary may issue preferred stock to persons other than the association. This preferred stock may have voting rights in designated circumstances. An association may capitalize its finance subsidiary without Board approval by transferring assets, which (1) do not have an aggregate book value exceeding, without prior written Board approval, 30 percent of the book value of the parent's total assets and (2) do not have an aggregate current market value exceeding, without prior written Board approval, the lesser of the amount necessary and customary to a particular type of issuance or 200 percent of the gross proceeds of the issuance. An association may guarantee the unpaid principal balance of its finance subsidiary's obligations, except that the finance subsidiary's resources must be exhausted prior to recourse to the parent's guarantee. An off-shore finance subsidiary established pursuant to the current regulation may make certain otherwise restricted investments. The current regulation prohibits a finance subsidiary from (1) dealing in accounts of its parent association, (2) stating that its securities are insured by the FSLIC, or (3) issuing securities accelerating upon its parent's insolvency or receivership. Finally, an association must notify and provide certain information to its PSA before the creation of a finance subsidiary or the transfer of additional assets to a finance subsidiary. Similarly, a finance subsidiary must notify and provide certain information to its parent association's PSA within 10 days after any issuance of securities by a finance subsidiary. Finally, the current regulation provides that a finance subsidiary of a Federal association shall not be consolidated with its parent association for purposes of calculating its parent's net-worth requirement under § 563.13.

In adopting the current regulation, the Board intended to relieve an implied restriction and found that it was in the public interest for Federal associations to be permitted to take immediate advantage of their authority to issue securities through finance subsidiaries. Therefore, the rule was made effective upon publication. However, the Board solicited comments on the provisions of the rule and on any other steps necessary to ensure that finance subsidiaries are established and operated in accordance with safe and sound practices. The comment letters received supported the regulation and suggested various modifications. In addition, the Board's staff received numerous inquiries and requests for opinions to clarify the meaning of certain provisions of the regulation.

Proposed Amendments

On April 30, 1985, the Board proposed amendments responsive to these suggested modifications and requested clarifications (Board Res. No. 85-322, 50 FR 20422 (May 16, 1985)) ("proposed regulation"). The proposed regulation would amend numerous provisions of the current regulation, including provisions relating to the transfer of assets and the remittance of proceeds. Section 563.13-2 of the proposed regulation would require the net proceeds of certain financings through a subsidiary of a Federal association or state-chartered insured institution to be included in a parent insured institution's liabilities when computing its net-worth requirement. The Board proposed these changes to clarify provisions of the current regulation, to respond to inquiries and comments from the thrift industry, and to prevent finance subsidiary actions and resulting consequences not intended by the Board.

The proposed regulation would revise various provisions of § 545.82 controlling the creation and operation of finance subsidiaries by Federal associations. The Board is aware that these revisions also affect finance subsidiaries of state-chartered institutions (included in the definition of finance subsidiary in § 563.13-2(a)(4) of the final regulation) established pursuant to parity provisions under state law and in compliance with the provisions of § 545.82. The proposed regulation also would include exemptions for finance subsidiaries of Federal associations from the loan-to-one-borrower regulation (§ 563.9-3) and holding company restrictions (§ 584.6).

One of the most significant provisions of the Board's proposed regulation is § 563.13-2, which relates to all institutions whose accounts are insured by the FSLIC, and which would require that a parent institution when computing its net-worth requirement must include in its total liabilities for purposes of § 563.13(g)(1) an amount equal to the net proceeds of any financing through a subsidiary as defined in § 563.13-2(a) of the proposed regulation unless one of the two following exceptions applies. The first exception would permit exclusion of a financing through a subsidiary to the extent that the proceeds of the securities issuance are remitted to its parent institution in exchange for a liability issued by the parent that is otherwise included in the parent's total liabilities pursuant to § 563.13(g)(1). The second exception would apply to the extent that the duration of securities issued is substantially the same, at the time of issuance, as the duration of the assets pledged to or funding the securities issued by the subsidiary. The Board intended this amendment to prevent institutions from transferring their interest-rate risk to their finance subsidiaries without the imposition of a higher net-worth requirement on the parent institution. The substantive comments received on this issue and a discussion of the Board's position on this matter are set forth below.

The Board's proposed amendments to § 545.82 would set forth the authorized type, amount, and treatment of transfers by a parent Federal association to its finance subsidiary. First, the proposal's preamble clarified that the equity accounting method applied in accordance with generally accepted accounting principles ("GAAP") does not require associations to recognize losses upon the transfer to a wholly-owned subsidiary of assets yielding below-market interest rates, generally referred to as "underwater assets". Second, proposed paragraph (c)(1)(ii) would increase the maximum per-issuance transfer limitation so that the

market value of the collateral for an issuance could equal up to 250 percent of the issuance's gross proceeds, instead of the current 200 percent limit. The Board preliminarily determined that this higher limit is necessary for some recently developed types of transactions. Revised paragraphs (c)(1)(i) and (ii) as proposed would authorize an association's PSA, instead of the Board, to give prior written approval for an association to exceed (1) the aggregate transfer limitation of 30 percent of the book value of an association's assets or (2) the per-issuance transfer limitation restricting the market value of transferred collateral for a finance subsidiary's issuance to the amount necessary and customary for that type of issuance or 250 percent of the gross proceeds of the issuance. Third, the Board's proposal also would amend paragraph (c)(1) to enable an association to transfer or make available liabilities issued by the association, such as certificates of deposit ("CDs") and subordinated debt, to their finance subsidiaries. The Board indicated in proposing this change that such transactions would not violate the prohibition of a subsidiary dealing in the deposits or savings accounts of its parent, even if the collapse of the subsidiary could cause the collateralized CDs to be transferred to the holders of the finance subsidiary's securities. The Board further stated that the same method of computing aggregate and per-issuance transfer limitations that applied to collateralized guarantees would apply to collateralized liabilities. Finally, the proposed regulation would also amend § 571.5(a) to clarify that the transactions between an insured institution and its finance subsidiary, in accordance with § 545.82 of this chapter, would not be considered to be transfers under § 571.5(a).

The proposal also would revise the authorized extent of an association's guarantees of its finance subsidiary's securities issuances and the recourse of securities holders to those guarantees. Proposed paragraph (c)(3) would enable an association to guarantee accrued but unpaid interest and redemption premiums, as well as the unpaid principal balance, of its finance subsidiary's obligations. Furthermore, because of the impracticality and cost of identifying and exhausting all of a finance subsidiary's resources, as required by the current regulation, proposed paragraph (c)(3) would only require exhaustion of those resources collateralizing a finance subsidiary's securities issuance prior to recourse to its parent's guarantee.

The proposal also would set forth authorized ways for a finance subsidiary of a Federal assocation to operate and to remit proceeds to its parent association. First, proposed paragraph (d)(1) would expressly recognize the right of a finance subsidiary to issue its securities through a third-party intermediary, a provision designed to aid small associations unable to gain favorable market access directly. Additionally, proposed parargaph (e) sets out a number of authorized ways for a finance subsidiary to remit proceeds to its parent association and addresses the accounting impact of each manner of remittance. The numerous comments received on these issues are discussed below. Finally, proposed paragraph (e) also would authorize expressly finance subsidiaries to retain as part of the reasonable cost of issuing securities any necessary reserves. The proposal would also authorize "multi-tiered" finance subsidiaries. However, the proposal would eliminate, as discussed below, paragraph (c)(4) of the current regulation, which permits certain otherwise prohibited investments of off-shore finance subsidiaries. The Board preliminarily determined that such investment is unnecessary and could permit certain unsound practices.

The proposal's preamble also specified the regulatory treatment of a finance subsidiary within a total corporate setting. Since the finance subsidiary is a separate corporation, any assets transferred to it by its parent would not be authorized to be included with the parent association's assets for purposes of determining whether an association is a "qualified institution" for purposes of section 5(r) of the Home Owners' Loan Act (12 U.S.C. 1464(r)) pertaining to interstate branching by Federal associations, or section 408(n) of the National Housing Act (121 U.S.C. 1730a(n)) and 12 CFR 584.2–2, concerning activities of unitary savings and loan holding companies. On another matter, paragaraph (f)(1) would provide that a finance subsidiary is not an affiliate of its parent association for purposes of the Savings and Loan Holding Company Act provisions on transactions between affilates (121 U.S.C. 1730a(d)). Nevertheless, proposed paragraphs (f)(2) and (f)(3) would prohibit specific activities between a finance subsidiary and its parent or its parent's affiliates, if the parent is a holding-company subsidiary. The Board preliminarily determined that such activities could be harmful to an institution and the FSLIC and evasive of its regulations controlling transactions within a holding-company context.

Finally, the Board's proposal would revise the requirement for an insured institution to notify its PSA at designated times and increases the PSA's control over the creation of certain finance subsidiaries. The proposed regulations would require the board of directors, or an executive committee of the board of directors, of an insured institution failing to meet its net-worth requirement pursuant to § 563.13 or operating under a supervisory agreement, to obtain PSA approval to establish a finance subsidiary. This requirement reflected the Board's concern relating to a failing institution transferring a significant portion of its most marketable assets to a finance subsidiary to collateralize the issuance of preferred stock or debt obligations.

The Board indicated its expectation that PSAs would approve the establishment of a finance subsidiary unless the PSA found that the establishment and operation of a finance subsidiary was likely to adversely affect the finance condition or safe and sound operation of the parent association. In order to ensure timely review, the proposal would require the PSA, within 10 days of receiving the information required by paragraph (g)(1), to notify an applicant that its application was complete or that additional information was required. The proposal would deem an application approved unless the PSA ruled upon it within 30 days of the date of written notice that all required information has been filed, and would authorize appeals of any adverse determination to the Board.

Comment Overview

The Board received 36 comment letters on its proposed regulation: 11 from Federal associations, 7 from state-chartered insured institutions, 6 from law firms, 2 from economic consulting firms, 3 from trade or professional associations, 5 from brokerage firms or investment banks, 1 from a professor of finance, and 1 miscellaneous comment. The Board also received a comment from the Federal Home Loan Mortgage Corporation. These comments addressed a variety of issues, raised a number of substantive objections, and suggested alternative methods for the Board to achieve its goals. These comments and the resolution of the issues presented, as well as any changes from the proposed regulation, are discussed below.

The commenters unanimously supported the Board's decision to authorize the creation of finance subsidiaries by Federal associations. They expressed the view that the issuance of securities through finance subsidiaries and collateralizing such securities issuances with assets transferred from parent associations will enhance market access by associations. Furthermore, they indicated confidence that the separate corporate structure of finance subsidiaries and the collateralization of most finance-subsidiary issuances give adequate protection to holders of finance subsidiaries' securities. They stated their belief that these factors will cause those issuances to be rated highly by the national rating agencies, thereby reducing the interest-rates carried by such issuances and providing a low-cost source of capital for associations; such low-cost financing should help to enhance the financial viability of associations.

Most commenters appreciated the need for the Board to control potential harm to insured institutions and to the FSLIC by assuring that the securities issuances by subsidiaries of insured institutions would not increase an institution's interest-rate risk. Most commenters supported the view that the issuances of a subsidiary should not be allowed to increase its parent institution's overall interest-rate risk exposure. Most commenters also concurred with the Board's requirement in the current regulation that associations create and use finance subsidiaries in accordance with a formal business plan to reduce interest-rate risk. These commenters also generally urged extensive updating and strenuous enforcement of the business-plan process. In addition, a considerable number of commenters supported the Board's goal of using some method to identify when securities issuances through subsidiaries would increase the interest-rate risk of an institution and understood the need for the Board to take measures to control such risk.

However, commenters voiced considerable concern over certain provisions of the proposed regulation, with the largest number of comments either objecting to the structure and effect of the Board's proposed requirement for duration matching of a finance subsidiary's securities issuances and the assets collateralizing such issuances ("collateralizing assets"), or requesting clarification of or objecting to the proposed accounting treatment of transactions between parent associations and their finance subsidiaries. Some commenters objected to the differing treatment of varying methods of remitting proceeds to parent associations. Other commenters simply requested the Board to clarify the way that various transactions should be computed under the proposed transfer limitations. Some commenters took strenuous exception to the Board's proposed provision regarding duration matching, particularly as it relates to state-chartered insured institutions.

After consideration of the comments and other available information, the Board has determined to adopt the regulatory changes substantially as proposed, as discussed below.

Accounting Treatment

Four commenters argued that, contrary to statements made in the proposed regulation's preamble, an association's level of transfers to its finance subsidiary is identical whether proceeds are remitted by the subsidiary's redeeming its common stock or purchasing assets from its parent. They objected to the proposed provision which would have allowed reduction of the parent's investment in its subsidiary only by the finance subsidiary's redemption of its capital stock held by its parent. These commenters also argued that a netting concept should be introduced to permit reducing the amount of assets transferred by a parent association by remittances from a finance subsidiary to its parent by means of the redemption of common stock, payment of dividends, return of capital on capital contributions, or the purchase of assets.

The Board agrees with these commenters that all of the enumerated forms of remittance should be treated consistently. The Board has determined, as set forth in the current regulation, that no method of remittance shall reduce the level of an association's outstanding aggregate or per-issuance transfers of assets to its finance subsidiary. Although all of the forms of remittance specified in the proposed and final regulations are authorized transactions, the Board has decided not to authorize netting for any form of remittance. As stated in the preamble to the current regulation:

> The limit would be calculated as of the date of a proposed transfer, so that the current book value of any previous transfers (the book value less any decrease resulting from, for example, receipt of payments of principal, rather than the book value at the time the previous transfer was made) would be added to the current book value of the proposed transfer and divided by the current book value of the association's assets. (49 FR 29359, July 20, 1984)

Consequently, if an association viewed on an unconsolidated basis has transferred 30 percent of its assets to its finance subsidiary, the current book value of the finance subsidiary's assets would have to decrease as a percentage of the current book value of its parent's assets on an unconsolidated basis before the finance subsidiary could increase its assets. For example, more assets could be transferred to the finance subsidiary if the current book value of the finance subsidiary's assets decreased due to the receipt of payments of principal or the repayment of any mortgage assets by the mortgagor.

Reducing an association's level of outstanding transfers due to the remittance of proceeds would after several cycles allow the transfer of most of an association's assets to its subsidiary. Such a level of transfers could limit the association's other activities, including the extension of housing credit, and make the finance subsidiary the preliminary operating entity. The Board recognizes that the preamble to the proposed regulation did indicate that the redemption of common stock would reduce a parent association's investment in its finance subsidiary for purposes of the 30 percent aggregate investment limitation. Nevertheless, the Board is concerned that netting could allow excessive transfers to finance subsidiaries and that such action could endanger the safety and soundness of associations.

The Board is aware that some associations, as a result of deducting the amount of certain remittances by finance subsidiaries of proceeds of securities issuances from the amount of assets transferred to a finance subsidiary, may have exceeded the transfer limitations as finally interpreted in this regulation (December 31, 1985). Such associations shall not be authorized to make further transfers (unless required for collateral maintenance purposes) until such associations are in compliance with this final interpretation of the transfer limitations.

Five commenters requested that the Board set out the method for calculating the 30 percent aggregate transfer limitations after the transfer, sale, or exchange of the assets initially transferred from a parent association. As described above: an institution must compare the current book value of a finance subsidiary's assets with the current book value of its parent's assets. This method must always be used to identify the level of assets transferred to

a finance subsidiary regardless of the passage of time or any other factor.

One commenter stressed that the Board should clarify that assets will not be counted twice under the transfer limitations when (1) assets constituting part of the finance subsidiary's initial capitalization are used later to collateralize a securities issuance or (2) assets are transferred and proceeds remitted between a parent association and a second-tier finance subsidiary. The Board affirms these interpretations; the regulation never intended that associations would be required to count such assets twice.

One commenter opined that the 30 percent and 250 percent transfer limitations should not be imposed on the transfer of a parent association's liabilities, except when collateralized. This commenter also requested that if the Board decides to count the transfer of such liabilities, it should state that this is a new requirement and should include a grandfather provision for transfers which occurred before the date of adoption of the final regulation. The Board finds no basis for such treatment. As the Board indicated in the preamble to the proposed regulation, the Board's reference in the current regulation to the transfer of assets "was intended to describe the financial resources from the point of view of the finance subsidiary, *i.e.* assets carried on the books of the finance subsidiary." (50 FR 20423, May 16, 1985). The Board therefore has determined that inclusion of a grandfather provision for such transactions is neither necessary nor appropriate.

The Board does wish, however, to emphasize that the regulation excludes an amount of securities issued through a subsidiary from its parent's computation of its net-worth requirement if the proceeds of the issuance are remitted in exchange for a liability issued by the parent institution that is otherwise included in the parent institution's total liabilities pursuant to § 563.13(g)(1). This prevents double-counting in the parent's computation of its net-worth requirements of liabilities of the parent transferred to its finance subsidiary.

Finally, a commenter requested that the Board clarify that a parent association's agreement to indemnify underwriters against a finance subsidiary's failure to perform its obligations to them pursuant to an underwriting agreement does not constitute a guarantee under § 545.82(a)(2). The Board does not consider such indemnification agreements to constitute guarantees, and they are not subject to the restrictions of § 545.82(c). Similarly, the Board does not consider standard representations and warranties that are substantially the same as those made when an association sells mortgages to the Federal Home Loan Mortgage Corporation or Federal National Mortgage Corporation to be guarantees. The Board anticipates that investors may require associations to make such representations respecting mortgages transferred from an association as collateral for collateralized mortgage obligations ("CMO's") or other securities issued by finance subsidiaries. Unless the association is transferring the mortgages with recourse or is guaranteeing payment of its finance subsidiary's obligations, the association simply is providing standard representations relating to the lawfulness and validity of mortgages transferred from its own portfolio that the association originated and serviced.

Duration Matching Requirement

As indicated in the preamble to the proposed regulation, the Board is seriously concerned that under the current regulation an insured institution can, in effect, transfer its interest-rate risk resulting from the mismatch of maturities of an institution's assets and liabilities to a subsidiary without the imposition of a net-worth requirement on the subsidiary's securities issuances. The effect of large levels of interest-rate risk on the thrift industry is well documented. Interest-rate risk was the primary cause of the merger or failure of over 1,100 savings institutions between June 1980 and September 1984, with over a third of these institutions either liquidated or merged under supervisory or FSLIC mandate.

The Board believes that interest-rate risk stemming from the securities issuances of a subsidiary and the assets collateralizing such securities issuances can harm signficantly a parent institution's financial position. Absent an adequate net-worth cushion, the finance subsidiary can cause considerable harm to an institution and the FSLIC by draining away valuable resources from its parent institution, perhaps resulting in the institution's insolvency.

The Board never intended to exclude the net proceeds of a finance subsidiary's securities issuances from calculation of its parent's net-worth requirement if the securities issuances, coupled with the assets collateralizing those issuances, continue to expose the parent to interest-rate risk. The Board originally anticipated that the obligations issued by finance subsidiaries would be collateralized mortgage obligations or similar pass-through types of instruments that effectively transfer any interest-rate risk to the holders of the securities. The Board believes that the net-worth requirement of the parent institution should exclude the finance subsidiary's securities issuance only when there is effectively a sale of the collateralizing assets by the issuance of pass-through securities.

The Board's final regulation achieves the goals set forth in the proposed regulation by adopting the basic structure of the proposed duration matching requirement [1] as modified in three significant respects based on the comments and further Board consideration. First, the Board has determined that, in addition to duration matching at initial issuance, the nature of a subsidiary's securities issuance and collateralizing assets must be such that the duration matching is maintained throughout the life of the securities without active management. This standard requires a parent institution computing its net-worth requirement to include those securities that were initially duration matched but that could become unmatched over time. This provision has the effect of restricting those duration-matched issuances excluded from a parent institution's net worth requirement to CMOs, pay-through bonds, and other pass-through types of financing that effectively avoid exposing institutions to interest-rate risk as initially intended by the Board. Second, the Board has determined that a parent institution must include in its total liabilities pursuant to § 563.13(g)(1) the net proceeds of securities issued through a subsidiary (defined in section 563–2(a)(1) as an "amount of securities issued through a subsidiary"), in computing the parent's net-worth requirement if any of the proceeds are remitted to the parent, since such remittance reflects the purpose of funding the parent institution. Third, the Board not apply the net-worth inclusion requirement of § 563.13–2 to (1) certain

[1] The final regulation, as did the proposed, requires insured institutions to use the duration measure developed by Macaulay. *See* Macaulay, F.R. *Some Theoretical Problems Suggested by the Movement of Interest Rates, Bond Yields, and Stock Prices in the U.S. Since 1956.* New York: National Bureau of Economic Research (1938). This measure, similar to other duration-matching methods, measures the weighted average maturity or repricing period of a stream of payments. If the duration of an asset exactly equals the duration of the liability being matched, then both the asset and liability will on the averge reprice at the same time, and the resulting income stream is, in effect, immunized against changes in interest rates. The Board specifically requested comment on the application and effects of Macaulay's duration measure.

securities issuances for which a registration statement has been filed with the Securities and Exchange Commission or other designated action has been taken, (2) promissory notes executed, or (3) transactions undertaken pursuant to binding contracts with a term of one year or less entered into on or before December 31, 1985.

Section 563.13–2(c) of the final regulation thus requires that, unless one of two exceptions applies, the net proceeds of an amount of securities issued through a subsidiary shall be included in a parent insured institution's total liabilities (as defined in § 563.13(g)(1)) when computing the parent institution's net-worth requirement pursuant to § 563.13 or its growth limitation pursuant to § 563.13–1. This provision requires inclusion under § 563.13(g)(1) of the net proceeds of an amount of securities issued through a subsidiary that is: (1) A finance subsidiary (as defined in § 563.13–2(a)(4)) of a Federal association or state-chartered insured institution established and operated in compliance with the provisions of § 545.82; [2] or (2) a service corporation, operating subsidiary, or other type of subsidiary not in compliance with § 545.82 if any proceeds of such securities are remitted to a parent insured institution. This rule does not apply to an amount of securities issued by a subsidiary, such as a service corporation, totally for its own purposes, *i.e.* to use the proceeds for its own operations and not to remit a portion of the proceeds to its parent. Furthermore, the Board understands that a subsidiary may issue securities for its own purposes, but for a temporary period or for a reason incidental to the subsidiary's own operations, remit some portion of the proceeds to its parent institution. In such a case the net proceeds of an amount of securities issued through such a subsidiary would not be subject to the inclusion requirement of § 563.13–2(c) if the subsidiary demonstrates to the PSA of its parent institution that the securities were issued for the subsidiary's own reasonable business purposes in accordance with its own reasonable written projections of its financing requirements.

The final regulation, like the proposal, provides two exceptions from the net-worth inclusion requirement for an amount of securities issued through a subsidiary. The first exception applies if the proceeds of such an issuance are remitted in exchange for a liability issued by the subsidiary's parent insured institution if the liability is otherwise included in the parent's total liabilities pursuant to § 563.13(g)(1). This exception avoids double counting of the liability in the parent's computation of its net-worth requirement. The second exception applies if the duration of the securities issued and any collateralizing assets are substantially duration matched at the time of issuance, and if the relationship of the securities and collateralizing assets is such that the match will be maintained without active management throughout the life of the securities. The duration of the assets collateralizing a securities issurance is considered substantially similar to the duration of the subsidiary's securities issuance if the duration of the assets is between 90 percent and 110 percent of the duration of the securities issued.[3] Many structured financings, such as CMOs and pay-through bonds, would fall within this range and the Board intends to continue favorable net-worth treatment for such securities. This duration-matching exception is evaluated on an issuance-by-issuance basis determined by whether a particular securities issuance and its collateralizing assets expose a parent institution to interest-rate risk. Therefore, the net proceeds of an amount of one issuance of securities may be required to be included in a parent institution's computation of its net-worth requirement, while the net proceeds of other securities issued through the same subsidiary will be excluded.

Finally, in response to comments, the Board has decided that section 563.13–2 will not apply to certain securities offered, promissory notes executed, or certain binding contracts with a term of one year or less entered into on or before December 31, 1985. Among other things, this means that an amount of securities issued through a subsidiary on or before that date will not be required to be included in the subsidiary's parent institution's liabilities when calculating its net-worth requirement. However, the regulation requires the parent institution to include in its net-worth computation any renewal, extension, or rollover of securities after December 31, 1985, unless such a transaction is undertaken pursuant to a binding contract with a term of one year or less outstanding on or before December 31, 1985. For example, if a finance subsidiary executed a binding contract on August 1, 1985, authorizing that finance subsidiary to issue commercial paper (assuming 30 day maturity) and to redeem and reissue such commercial paper every 30 days until July 31, 1986, those issuances of commercial paper would not be subject to the net-worth inclusion requirement and growth effects of § 563.13–2(c). On the other hand, if such a contract executed on August 1, 1985, extended for 10 years until 1995, securities issued under such a contract after December 31, 1985, would be included in the finance subsidiary's parent institution's computation of its net-worth requirement.

Comments on the Requirement for Duration Analysis

Commenters addressed various aspects of the Board's duration-matching requirement, as well as proposing alternative approaches to interest-rate risk problems. These commenters argued that if the Board adopts a requirement to limit interest-rate risk, that it should: (1) Permit no exclusions for purposes of computing the parent's net worth; (2) compare the finance subsidiary's securities issuances and the association's use of the proceeds; (3) view the interest-rate risk of the consolidated institution; (4) use gap analysis on a consolidated basis as a simpler and more effective way to limit interest-rate risk; and (5) incorporate the use of interest-rate futures, options, and swaps as methods of reducing interest-rate risk. They also asked that the Board resolve certain technical problems related to calculating the duration of adjustable-rate assets

[2] It should be noted, however, that the inclusion of an amount of securities issued through a subsidiary that is a finance subsidiary (as defined in § 563.13–2(a)(4)) for purposes of calculating the parent's "total liabilities" pursuant to § 563.13(g)(1), its growth factor pursuant to section 563.13(g)(4) and the growth regulation (§ 563.13–1) will not require consolidation for purposes of the direct-investment component of the contingency factor. [Section 563.13(g)(5) (iii)]. The Board does not consider investments of institutions in finance subsidiaries as defined in § 563.13–2(a)(4) to be direct investments subject to § 563.9–8, the direct-investment regulation. Board Res. No. 85–79–A, 50 FR 6912, 6922 (Feb. 19, 1985) (to be codified at 12 CFR 563.9–8) ("direct-investment regulation").

[3] For example, if a finance subsidiary has one asset which is a five-year, $100 par bond with a 12-percent coupon interest rate and a current market yield of 10 percent, the duration of the bond is a 3.95 years. If the subsidiary issues a security to support the bond with a duration between 3.56 and 4.35 years, the security will be considered to have a duration that is substantially similar. If the security was, for example, a $160 par value, four-year bond with zero-percent interest rate and a 12-percent market yield, the security would have a duration of four years at the time of issuance. Since this duration is in the acceptable range of 3.56 years to 4.35 years, the securities issuance would not be added to the liabilities of the parent for purposes of calculating the net-worth requirement. If, however, the subsidiary issued a $100 par value, four-year note with a 12-percent coupon and market yield, the duration of the security would be 3.29 years. Since the duration of the four-year note is less than 90 percent of the duration of the five-year asset, it is not substantially duration matched. *See* 50 FR at 20426.27.

and liabilities, as well as adjusting the duration measurement for varying interest rates, maturities, and prepayment assumptions.

One comment urged inclusion of the total amount of all securities issued through a subsidiary in computing the parent institution's net-worth requirement. This commenter reasoned that the parent institution retains the same interest-rate risk for securities issued through a wholly-owned subsidiary as if it had issued such securities directly. Therefore, this commenter contended that, since the institution's risk is not decreased, use of the subsidiary should have no bearing on the institution's net-worth requirement, which should be the same as if the institution issued the securities directly.

The Board acknowledges that imposing a net-worth requirement on all securities issuances by a subsidiary serving as a financing vehicle for its parent arguably could have a positive effect on insured institutions and the FSLIC. However, the Board proposed the exemption for duration-matched issuances on the grounds that a subsidiary's securities issuance that is substantially free of interest-rate risk to the subsidiary and its parent may safely be excluded from its parent's net-worth requirement and will secure the benefits of using such finance subsidiaries to a broader group of institutions. As mentioned above, the exception for a subsidiary's securities issuances if proceeds are remitted in exchange for liabilities issued by the subsidiary's parent avoids double-counting when calculating the parent's net-worth requirement. The Board therefore believes that retaining these exceptions provides the most effective way to maximize the benefits of finance subsidiaries while minimizing interest-rate risk.

Conversely, eight commenters contended that the Board should retain its current regulation and rely on business plans and Board supervision to prevent abuse of finance subsidiaries and increases in interest-rate risk, while giving needed management flexibility to institutions. Although the Board concurs that such supervision is beneficial to insured institutions and the FSLIC, it does not find this supervisory process to be an adequate substitute for the imposition of a net-worth requirement on the amount of securities issued through a subsidiary in cases where a subsidiary's mismatching of its securities and any collateralizing assets exposes the subsidiary and its parent to interest-rate risk. As with regulation of the parent institution, the Board must rely both on its supervisory oversight and on an adequate amount of net worth to cushion the FSLIC from excessive risk of loss.

Five commenters opposed the entire concept of including a subsidiary's securities issuances in its parent's calculation of its net-worth requirement because such a requirement restricts issuances by subsidiaries to CMOs and other types of pass-through securities rather than allowing institutions to issue commercial paper and short-or-intermediate-term debt collateralized by long-term, low-yield assets with fixed interest rates. The commenters contended that such securities issuances provide the greatest benefit to institutions by allowing them to take advantage of underwater assets already on their books to obtain low-cost financing traditionally available on the short-to-intermediate end of the yield curve.

The Board acknowledges the potential benefits to be derived from low-cost financing, but does not deem those benefits to eliminate the need for the imposition of a net-worth requirement on such issuances if not duration-matched. As seen from recent industry experience, an institution's duration mismatch of long-term assets and short-term liabilities can prove profitable but also poses the significant risk of large negative spreads if short-term interest rates rise dramatically due to general market forces. An adequate level of net worth helps to protect institutions from the severe consequences stemming from such economic fluctuations.

In a similar vein, five commenters contended that the Board should achieve its goal of controlling interest-rate exposure by comparing the duration of a subsidiary's securities issuances and the assets acquired by the parent institution with the proceeds remitted by the subsidiary. These commenters argued that this method would deter a parent institution from using proceeds remitted by its subsidiary to pursue activities that generate greater interest-rate risk. They suggested that this alternative would give subsidiaries the opportunity to issue low-cost, short-or-intermediate-term financing. They expressed the view that such low-cost financing benefits a parent institution if it reinvests the proceeds in higher-yield assets matching the duration of the subsidiary's securities issuances.

The Board finds this suggestion unpersuasive because it does not adequately address the Board's concerns. Under this proposal, a parent institution could still shift its interest-rate risk to its subsidiary without a concomitant increase in, or even with a decrease of, the parent's net-worth requirement, even though interest-rate risk to the parent may be increased by a mismatch of maturities of the subsidiary's securities and collateralizing assets. As discussed in response to the previous comment, an approach relying on a favorable interest-rate spread may be profitable but contains significant interest-rate risk from future market movements. The Board, therefore, finds that it would be inappropriate to exclude an amount of securities issued through the subsidiary from the calculation of its parent's net-worth requirement unless the duration match of the securities and any collateralizing assets passes through any interest-rate risk to a subsidiary's securities holders. Furthermore, as a practical matter, the Board believes that monitoring the match suggested by these comments is not feasible. To isolate and track the specific assets purchased with the proceeds remitted by the subsidiary is an unmanageable task.

Eight commenters suggested that the appropriate approach to determine if an amount of securities issued through a subsidiary should be included in the subsidiary's parent's calculation of its net-worth requirement is to measure the interest-rate risk exposure of the consolidated entity before and after the subsidiary's issuance of securities and the investment of the proceeds by the parent institution. These commenters argued that to the extent that an institution's interest-rate risk, including that of the parent and subsidiary, remains constant or decreases, the amount of securities issued through a subsidiary should be exempt from the Board's net-worth requirements. Some commenters linked this proposal with the suggested alternative, discussed above, to match the duration of a subsidiary's securities issuance and the reinvestment of the proceeds by the parent. Another alternative presented by six commenters was the use of gap analysis on a consolidated basis, rather than duration analysis, as a less-complicated measurement already used for other purposes. Some of the commenters that recommended alternatives to the proposed duration-matching requirement also urged use of a weighted sliding scale, so that the percentage of a finance subsidiary's securities issuance included in computation of its parent's net-worth requirement would be based on the degree of interest-rate risk exposure, rather than using an all-or-nothing approach if the duration of an issuance

falls outside of the Board's duration parameters. These commenters opined that such a system would provide an additional incentive for managers to reduce interest-rate risk to the greatest possible extent.

All of these comments, although reasonable recommendations, misconstrued the Board's primary policy focus underlying the duration-matching provision. First, it is not Board policy to exclude from a parent's net-worth requirement the amount of a securities issuance, whether at the parent or subsidiary level, simply because it reduces interest-rate risk exposure. Rather, the justification for the proposed exclusion of substantially duration-matched securities issuances, such as CMOs, rests on the similarity of these transactions with actual sales of the supporting collateral. The Board believes that it is appropriate to exclude an amount of securities issued through a subsidiary from its parent's calculation of its net-worth requirement if the relationship between the securities issuance and the collateral for that issuance, in effect, avoids any interest-rate risk to the finance subsidiary and its parent. Second, there is a fundamental concern preventing the Board from imposing any particular measure of interest-rate risk on a consolidated basis for a parent institution and its finance subsidiary. The Board is not aware of any universally-accepted measure of interest-rate risk exposure, and the Board is hesitant to impose any standard on a consolidated institution if the measure is not so accepted. The Board is using duration-matching in the final regulation for the limited purpose of exempting duration-matched securities from the general requirement that parent institutions include any amount of securities issued through a subsidiary in their total liabilities under § 563.13(g)(1). The Board is not, however, imposing a rigid requirement that institutions rely on such a measure to the possible exclusion of other innovative actions to control interest-rate risk on a consolidated basis.

Another concern with the proposed duration-matching concept, as expressed by three commenters is that it requires measurement only at the time of issuance. These letters correctly noted that while a subsidiary's securities issuances and collateralizing assets may be duration-matched at issuance, this match may not be maintained over the life of the securities. Thus, over time, the parent may be reexposed to interest-rate risk from the subsidiary. As a result, some commenters suggested that the Board should require continual duration-matching. The Board agrees that under the proposed requirement, duration mismatches could occur subsequent to initial issuance. The final regulation requires that a subsidiary's securities and supporting collateral be duration-matched at the time of issuance and that the structure of the transaction guarantee that this match will be maintained without active management. This ensures that such a securities issuance will not expose the parent at some future date to increased interest-rate risk. The Board believes that the types of securities fulfilling this requirement are pass-through instruments, including CMOs and pay-through bonds. Thus, this requirement will limit the potential type of securities issuances that subsidiaries can issue if their parents do not wish to include the net proceeds of those securities issuances in total liabilities when computing their minimum net-worth requirement or growth.

Six comment letters also questioned the proposal's exclusive reliance on the duration-matching standard, contending that it ignores numerous off-balance-sheet techniques that can be used to manage interest-rate risk. These include swaps, options, and futures. While the Board encourages institutions to use such tools within regulatory parameters to manage interest-rate risk exposure, the Board is concerned with reducing the net-worth requirements of institutions based on the use of such strategies. The Board has no assurance that these hedging techniques will be maintained by a subsidiary. To the extent that positions in swaps, options, or futures are closed out, the hedged position is re-exposed to interest-rate risk. Also, many of these hedging techniques suffer from "basis" risk.[4] Thus, price movements in the hedging instrument do not correspond precisely with those of the asset or liability being hedged. To the extent that basis risk is present, the interest-rate risk is not completely hedged. Hence, the Board believes the use of these techniques does not justify eliminating a net-worth requirement for such issuances.

Finally, ten commenters, including organizations providing sophisticated duration calculations and methodologies,[5] contended that institutions will not be able to conduct their duration measurements uniformly with those of other institutions unless the Board expressly sets forth the underlying economic and financial assumptions that it intends institutions to use. In addition, these commenters suggested that it may be difficult for an institution to measure uniformly the duration of adjustable-rate assets and securities.

The Board agrees with these commenters that there will be numerous computational issues and that the use of varying assumptions by institutions may cause an initial lack of uniformity in reporting. However, the Board believes that prescribing uniform standards for duration measurements could impose an overly rigid framework on an analytical methodology that is still evolving. A significant number of sophisticated financial institutions and the national rating agencies, as well as the Board, are attempting to resolve the complex computational issues involved in the application of duration analysis, particularly with regard to mortgage-backed securities. Furthermore, as reflected by recent financial history, the appropriate assumptions concerning interest rates, maturities, and other duration measurement factors will change based on varying general economic conditions and the innovative financial structures created by financial industry participants.

Rather, the Board has decided to use two alternative methods to address the problems of computational questions and the lack of uniform reporting. First, the Board's Office of Policy and Economic Research will provide general guidance on appropriate assumptions after it monitors initial implementation by the industry and will also respond to individual inquiries regarding the implementation of the Board's duration-matching requirement. Second, in addition to requiring that institutions report the amount of securities issued through a subsidiary, the Board is requiring such subsidiaries to furnish their parents' PSAs and the Board's Office of Policy and Economic Research with duration calculations in written form for each amount of securities issued through a subsidiary and provide written certifications of the accuracy and validity of those duration calculations. Such statements should clearly reflect the underlying assumptions of the calculations, including interest rate, maturity, and prepayment assumptions. Furthermore, if a different calculation of duration is being relied upon for rating purposes, a subsidiary shall state the disparate

[4] Basis risk results from the fact that the asset or liability being hedged usually is not the same as the underlying asset of the futures contract.

[5] For example, see the comment letters of Smith Breeden Associates (July 2, 1985) and the Federal Home Loan Mortgage Corporation (June 21, 1985).

assumptions used for rating and Board reporting and the differing effects of using such assumptions. The certifications of accuracy and validity may be provided by the institutions themselves, or by underwriters, economic consulting firms, or other persons acting on institutions' behalf. The Board will monitor certifications to determine what guidance is needed by the industry.

The Board also specifically requested comment on the level of remittance of proceeds by a subsidiary to a state-chartered insured institution in order to be considered "substantially remitted" pursuant to § 563.13-2(a) of the proposal, thus triggering the requirement that the amount of the securities issued by a finance subsidiary be included in the parent's total liabilities for purposes of calculating its net-worth requirement, absent certain conditions. The one commenter that addressed this issue argued that the Board should only consider a subsidiary to fall under § 563.13-2(a) if the subsidiary is established primarily for the purpose of issuing securities and remitting 50% of the proceeds to the parent within 60 days. The Board finds this suggestion unpersuasive. First, the Board does not consider the timeframe of remittance to be an appropriate determining factor, since insured institutions could avoid application of this regulation by holding the proceeds for sixty days or whatever timeframe was designated.

Second, the Board disagrees with the commenter's suggestions that only securities issuances of which 50 percent or more of the proceeds are remitted to a parent institution should be included in its parent's net-worth requirement. The Board has determined to include the net proceeds of an amount of securities issued through a subsidiary in its parent institution's net-worth requirement if any of the securities' proceeds are remitted to the parent institution. The Board believes that the remittance of proceeds of securities issued through a subsidiary can serve the same purpose of funding a parent institution as issuances by a finance subsidiary. Such issuances would be subject to a net-worth requirement if issued by the parent institution and should be subject to a net-worth requirement when issued through a subsidiary unless any attendant interest-rate risk is passed through to the holders of those securities. Although the Board initially believed that a parent institution should include in its total liabilities the amount of the subsidiary's securities issuance only if the proceeds were substantially remitted to the parent, the Board has now determined that interest-rate risk is present if a securities issuance and its collateralizing assets are duration-mismatched, no matter what percentage of proceeds are remitted. Only the dollar amount of the remittance would vary.

The Board is also aware that interest-rate risk and other types of risk may stem from a subsidiary's securities issuance no matter what use is made of the proceeds, even if the proceeds are used for the subsidiary's own investment. However, in this regulation the Board is only seeking to impose a net-worth requirement on those issuances operating, at least in part, as a financing vehicle for a parent institution whether through securities issued by a finance subsidiary as defined in § 563.13-2(a)(4) or other subsidiaries.

Restricting the scope of § 563.13-2 to finance subsidiaries organized and operating in accordance with the protective provisions of § 545.82 would create incentives for institutions to issue securities through other types of subsidiaries to avoid the net-worth inclusion requirement of § 563.13-2. The Board believes it is imperative to avoid such a result in order to accurately monitor interest-rate risk exposure and to ensure better financial management and adequate capital to support such financing. Institutions could similarly avoid the regulation by remitting an amount to the parent lower than the amount considered to be "substantially remitted" if such a standard was adopted as proposed. The Board believes that corporations including subsidiaries other than financing types of subsidiaries, generally only issue securities in amounts needed for their own operating purposes and the Board does not seek to cause institutions to change normal practices to avoid the effects of § 563.13-2, particularly since interest-rate risk is caused by any securities issuance if the duration of the securities issuance and the collateralizing assets are mismatched. Accordingly, unless excepted, an amount of securities issued through a subsidiary, as well as an institution's pro-rata portion of the net proceeds of such securities issued through a jointly-owned subsidiary, will be subject to the net-worth consolidation and growth requirements of the final regulation if any proceeds of an issuance are remitted to a parent institution.

Preferred Stock

Commenters urged the Board to adopt an exception to proposed § 563.13-2(b) to clarify that preferred stock issued by a finance subsidiary is not treated as an amount of securities issued through a subsidiary and therefore is not included with its parent's liabilities for purposes of computing the parent's net-worth requirement and growth. If so excepted, institutions would not be required to apply duration matching to preferred stock. These commenters noted the advantages of adjustable-rate preferred stock, allowing the issuer to pay a dividend rate that is significantly lower than the alternative cost of such capital, primarily because of the special 85 percent "dividend received" deduction generally allowed investor corporations that receive dividends from other corporations. Institutions, including some institutions with severe financial problems, may also use their substantial tax loss carry-forwards to offset income generated by the subsidiary, compensating for the lack of deductibility of preferred stock dividends by the issuing subsidiary. Such preferred stock may constitute the lowest-cost financing available to such insured institutions.

While the Board agrees that the issuance of preferred stock by a subsidiary, particularly adjustable-rate preferred stock, can provide low-cost financing to an institution, it is the Board's view that such preferred stock poses the same type of interest-rate risk to an institution as other types of securities issuances and should be subject to a net-worth requirement in the same manner as other securities issuances unless duration matched. The Board is concerned with the potential effect of such interest-rate risk to the FSLIC, particularly if such securities are issued by a subsidiary of an institution failing to meet its net-worth requirement or that is a supervisory case. The Board also is concerned about the consequences in case of an institution's insolvency if the institution could transfer a large percentage of its most marketable assets to a subsidiary and then issue preferred stock or other securities. In short, the Board has determined to treat preferred stock in the same manner as other amounts of securities issued through a subsidiary posing interest-rate risk to a finance subsidiary and its parent institution and potentially to the FSLIC.

Because this is a fairly new area of activity, however, the Board is specifically requesting comments and suggestions by interested persons on types of preferred stock or other securities issuances other than pass-through securities, such as CMOs and pay-through bonds, that would effectively be free of interest-rate risk to a finance subsidiary and its parent institution and that would transfer any attendant interest-rate risk to the

securities holders. Such comments must be submitted on or before March 3, 1986.

Treatment of Parent's Securities Held by Finance Subsidiaries

Two commenters contended that the Board should allow at least partial inclusion in the parent's net worth of the parent institution's subordinated debt, capital stock, mutual capital certificates or other instruments held by its finance subsidiary. The Board believes that a subsidiary's holdings of a parent's securities generally leaves the parent institution at risk through its ownership of the subsidiary. The Board believes that it would be inappropriate to permit the parent institution to count additional items in its regulatory net worth in this manner unless the institution can show the transfer of risk to third parties.

Joint Ownership of Finance Subsidiaries

One commenter argued that several Federal associations, particularly small associations, should be authorized to own a finance subsidiary jointly so that they can pool their resources for better access to capital markets. While some insured institutions are authorized to jointly own a subsidiary to conduct financing under independent state authority, the legal basis for the establishment of finance subsidiaries by Federal associations presents a major obstacle to authorizing a finance subsidiary jointly-owned by Federal associations. There is no explicit statutory authority for a Federal association to establish or invest in a finance subsidiary. Instead, a Federal association's authority to create finance subsidiaries and to issue securities through such finance subsidiaries is derived as an incident to the direct exercise of the association's authority to issue notes, bonds, debentures, or other securities (including capital stock) pursuant to section 5(b)(2) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1464(b)(2) (1982). In order for the establishment of a finance subsidiary to be incidental to the parent association's authority to issue securities, the subsidiary must be owned and controlled by that parent. Authorization of a finance subsidiary jointly-owned by Federal associations, in effect, would require a legal finding that the issuance of securities by one association is incidental to the issuance of securities by another association. The Board does not believe there is a sound basis for such a determination and a review of the case law in analogous areas, such as securities issuances by operating subsidiaries of national banks, reveals no precedent for such joint securities issuances.

Furthermore, the economic benefit of such issuances would be doubtful. First, associations jointly owning such a subsidiary generally would have to recognize losses on the transfer of underwater assets to such a jointly-owned entity. Second, such an entity could not be consolidated for tax purposes with a parent association owning an inadequate percentage of the subsidiary, thereby preventing the offsetting of the parent's net operating loss carryforwards against the subsidiary's income.

Miscellaneous Issues

Two commenters argued that assets transferred to a finance subsidiary should be included in determining if the parent is a qualified institution for purposes of section 5(r) of the HOLA. The Board continues to hold the view that such inclusion would be inappropriate since a finance subsidiary is a separate corporate entity.

Finally, one commenter objected to the proposed requirement of § 563.13–2(c)(1) that an insured institution, that fails to meet its net-worth requirement pursuant to § 563.13 or that is operating under a supervisory agreement, obtain the prior written approval of its PSA to establish a finance subsidiary. The commenter argued that state-chartered institutions in some states have been authorized for some time to establish finance subsidiaries under state authority, but with state approval. According to this commenter, the Board's requirement creates an unnecessary and illegal additional layer of supervision.

The Board finds this contention without merit in view of its authority to protect the FSLIC from adverse effects stemming from the transfer to subsidiaries of liquid, marketable assets by insured institutions that do not meet their net-worth requirements or that are supervisory cases. This final regulation, prevents, in the absence of PSA approval, the institution from placing such assets beyond the reach of the FSLIC. As discussed extensively in the preamble to the Board's direct-investment regulation, the Board has the legal authority and the obligation, pursuant to Title IV of the National Housing Act (12 U.S.C. 1724–1730) to take appropriate action to protect depositors and the FSLIC from undue risk, and that authority encompasses the power to prevent by regulation the risk caused by the inappropriate transfer of assets from insured institutions. (*See* 50 FR 6913–14, February 19, 1985).

In fact, §§ 545.82(f)(3) and 563.13–2(e)(3) of the Board's final regulation modify the proposal to clarify the Board's intention that such an institution, failing to meet its net-worth requirement or operating under a supervisory agreement, must obtain PSA approval to transfer additional assets to an existing finance subsidiary or to issue additional securities through an existing subsidiary, as well as to create such a finance subsidiary.

Finally, one commenter requested the Board to set forth in this regulation those factors that would cause courts to place assets transferred to a finance subsidiary beyond the reach of the FSLIC in case of a parent institution's insolvency. Since the resolution of this issue relies on the precedential decisions and future deliberations of the various federal and state courts, the Board does not consider it to be necessary or beneficial to the industry for the Board to set forth the criteria for corporate separateness in this regulation.

Other Clarifications and Technical Changes in the Final Regulation

Based on the public comments and further consideration of the proposed regulation the Board is making several additional clarifications and technical conforming amendments to the current regulation in addition to those incorporated in the proposed regulation.

First, in light of certain concerns raised by associations, the Board is adding a definition of "security", incorporating the definition from § 561.41, to clarify that the issuance of a security includes the issuance of a promissory note incident to a borrowing by an insured institution.

Second, as discussed above with regard to an association's guarantees, the Board is amending § 545.82(c)(3) to clarify that an association may also guarantee post-default interest on an obligation of its finance subsidiary.

Third, the Board is defining the term "finance subsidiary" in § 563.13–2(a)(4) to include (1) a finance subsidiary of a Federal association organized pursuant to § 545.82, or (2) a subsidiary of a state-chartered insured institution organized under state law but in compliance with the provisions of § 545.82.

Fourth, proposed § 545.82(c)(3) provided that a parent institution's guarantee of a finance subsidiary's obligations meeting the requirements of that section would not be considered to be an outstanding loan for purposes of the loans-to-one-borrower limitations of § 563.9–3. This final regulation is eliminating that specific provision. However, the Board is adopting § 563.9–3(b)(2)(iii) to provide that the amount of assets transferred by an insured

institution to a finance subsidiary (as defined in § 563.13-2(a)(4)) should not be subject to the limitations of § 563.9-3(b) on aggregate loans or commerical loans to one borrower.

Fifth, the Board also is making conforming changes to its regulations governing savings and loan holding companies in Part 584. The amendments are intended to permit a finance subsidiary as defined in § 563.13-2(a)(4) to engage in transactions, specifically authorized for such a finance subsidiary, with its parent Federal association or state-chartered insured institution. Another provision of the holding company regulations is being amended to permit such finance subsidiaries to incur debt without application to the Corporation.

The Board also wishes to clarify that any investment by an insured institution in a finance subsidiary as defined in § 563.13-2(a)(4) or in the equity securities of such a finance subsidiary, does not constitute a "direct investment" for purposes of the direct investment regulation. 50 FR 6912 (Feb. 19, 1985) (to be codified at 12 CFR 563.9-8).

Due to the liberalizing, clarifying, and technical nature of these proposed amendments, and the public comment already received on these and related issues, the Board does not believe that it is necessary or beneficial to the public to provide an additional comment period. Therefore, the Board is adopting these amendments on a final basis.

Technical Changes to Other Regulations

The Board is taking this opportunity to correct its recent Resolution amending the appraised-equity-capital regulation. *See* (Board Res. No. 85-949, 50 FR 45988 (Nov. 6, 1985)). The substance of the Board's amendments to the appraised-equity-capital regulation is unchanged.

Effective Date and Transactions Not Subject to Requirements of This Regulation

This final regulation will become effective on December 31, 1985, the date of the regulation's publication in the **Federal Register.** First, the amendments to § 545.82, except paragraph (f), relieve restrictions of the current regulation. Second, the Board finds good cause to make § 563.13-2 and paragraph (f) of § 545.82 effective upon publication in the **Federal Register** because (1) the effective date of the regulation does not cause any of a subsidiary's securities to be included in its parent's total liabilities under § 563.13(g)(1) beyond those included by the limits of the savings provision of § 563.13-2(b); (2) the savings clause must become operative on the date of publication to prevent insured institutions and their subsidiaries from hastily and unadvisedly commencing the issuance of securities in order to come within the saving provisions and to avoid the requirements of §§ 545.82 and 563.13-2, which are designed to protect the public, the FSLIC, and insured institutions by requiring net worth adequate to support safe and sound operation; and (3) securities issuances subject to § 563.13-2, except for those issued between the date of publication and December 31, 1985, will not be included in computing insured institutions' total liabilities under § 563.13(g)(1) until the end of the first quarter of 1986.

The final regulation will apply only to the creation of finance subsidiaries, to the issuance of securities through subsidiaries, and other actions within the purview of §§ 545.82 or 563.13-2 occurring after December 31, 1985. Furthermore, such inclusion is subject to the savings provision discussed above regarding the inclusion of an amount of securities issued through a subsidiary in a parent's total liabilities for purposes of sections 563.13 and 563.13-1.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1167 (1980), the Board is providing the following final regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board rejects the alternatives discussed above in **SUPPLEMENTARY INFORMATION** for the reasons given therein.

List of Subjects in 12 CFR Parts 545, 563, 571 and 584

Savings and loan associations, Savings banks, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 545, 563, 571, and 584, Subchapters C, D, and F, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 is revised to read as follows:

Authority: 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 3 CFR, 1943-1948 Comp., p. 1071, unless otherwise noted.

2. Revise § 545.82 as follows:

§ 545.82 Finance subsidiaries.

(a) *Definitions.* As used in this section:

(1) "Assets collateralizing" means any assets of a finance subsidiary securing, pledged to, or committed to a securities issuance by a finance subsidiary.

(2)(i) "Assets transferred" or "transferring assets" means assets of or liabilities issued by a parent association that are transferred or made available by such association to a finance subsidiary. Assets transferred include guarantees of a finance subsidiary's securities issuances by its parent association.

(ii) For the purpose of calculating the 30 percent aggregate and 250 percent per-issuance transfer limitations set forth in paragraphs (c)(1) (i) and (ii), respectively, of this section, assets transferred by an association to a finance subsidiary include—

(A) Assets or liabilities used to capitalize a finance subsidiary, to collateralize an issuance of securities by an established finance subsidiary, or to maintain collateral levels for any security issued by a finance subsidiary;

(B) Any guarantee issued by a parent association with respect to the securities issued by a finance subsidiary or any collateral for such guarantee as provided in paragraph (c)(4) of this section;

(C) Any portion of the proceeds of a securities issuance by a finance subsidiary held by a finance subsidiary for collateral maintenance, fee payment, or other necessary expenses related to the securities issuance or collateralizing assets; and

(D) Any assets or liabilities received by a finance subsidiary from its parent association by or after remitting to the parent association the proceeds of a securities issuance by such finance subsidiary.

The remittance of proceeds of a securities issuance to a parent association by any method, including those set out in paragraph (e) of this section, shall not decrease the amount of assets transferred for the purposes of paragraphs (c)(1) (i) or (ii) of this section.

(3) "Finance subsidiary" means a Federal association's subsidiary subject to the provisions of this section whose sole purpose is to issue securities (as defined in § 561.41 of this chapter) that the association is authorized to issue directly (or, if the parent association is a

mutual association, would be authorized to issue if it converted to the stock form) and to remit the net proceeds of such securities issuances to its parent association.

(b) *Establishment of finance subsidiaries.* A Federal association may establish one or more finance subsidiaries as defined in paragraph (a)(3) of this section. Prior to the establishment of any finance subsidiary, the board of directors of a Federal association shall, by resolution, vote to authorize the creation of a finance subsidiary in furtherance of a written business plan to reduce interest-rate risk and to control credit risk, and shall agree to make the books and records of its finance subsidiary available to the Board. The board of directors of an association shall be responsible for monitoring the use of all proceeds obtained through the issuance of securities by the finance subsidiary and shall ensure compliance with the business plan pursuant to which the finance subsidiary was established.

(c) *Transactions between a parent association and its finance subsidiaries.* (1) A Federal association may provide the capital to establish one or more finance subsidiaries by transferring assets to such a finance subsidiary: *Provided,* that:

(i) The aggregate current book value of all assets transferred by an association to a finance subsidiary shall not, without the prior written approval of the Principal Supervisory Agent of the parent association's Federal Home Loan Bank district ("association's Principal Supervisory Agent"), exceed 30 percent of the current book value of the association's total assets determined as of the date of any transfer of assets; and

(ii) The aggregate current market value of all assets transferred shall not, without the prior written approval of the association's Principal Supervisory Agent, exceed the amount necessary and customary for the issuance of the type of securities to be issued by a finance subsidiary (which may be the amount required by the rating criteria of a nationally recognized investment rating service) or 250 percent of the gross proceeds of a finance subsidiary's securities issuance, whichever is less.

(2) A finance subsidiary shall not be consolidated with its parent association for purposes of calculating the net-worth requirement of the parent association pursuant to § 563.13 of this chapter, but the parent association shall be subject to the requirements of § 563.13–2 of this chapter.

(3) An association may guarantee any securities issued by its finance subsidiary: *Provided,* that the guarantee shall not exceed the sum of the unpaid principal balance, any accrued but unpaid interest, any redemption premium, and any post-default interest on such securities, and *Provided further,* that the guarantee shall provide that the assets collateralizing the payment of such securities of the finance subsidiary shall be exhausted before recourse may be had to the guarantee.

(4) If a guarantee of a finance subsidiary's securities by its parent association is collateralized or if a liability issued by a parent association to its finance subsidiary is collateralized, then the greater of the face amount of such guarantee or liability or the current book value of the collateral shall be included in the total amount of assets transferred by a parent association under the limitation of paragraph (c)(1)(i) of this section. The greater of the face amount of such guarantee or liability or the market value of the collateral shall be included in the total amount that may be transferred by a parent association under the limitation of paragraph (c)(1)(ii) of this section.

(5) The amount of assets transferred (as defined in paragraph (a)(2) of this section) by an association to a finance subsidiary shall not be subject to the loans-to-one-borrower limitations imposed by § 563.9–3 of this chapter.

(d) *Issuance of securities by finance subsidiaries.* (1) A finance subsidiary of a Federal association may issue, either directly or through a third-party intermediary, any security that its parent association is authorized to issue (or, if the parent association is a mutual association, would be authorized to issue if it converted to the stock form), subject to the provisions of this section.

(2) A finance subsidiary shall not issue or deal in the deposits or savings accounts of its parent association, or state or imply that securities issued by it are insured by the Federal Savings and Loan Insurance Corporation.

(3) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent association is insolvent or has been placed into receivership.

(4)(i) An association providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock. An association shall not transfer or otherwise assign any interest in its finance subsidiary's common stock to any other person or entity without the prior written approval of the Board.

(ii) A finance subsidiary may provide for voting rights for holders of preferred stock in the manner, for the time period, and to the extent customary to protect the rights of such preferred stockholders: *Provided,* that upon the expiration of any event giving rise to the exercise of such voting rights, such rights shall be vested exclusively as provided in paragraph (d)(4)(i) of this section. Such events include, without limitation, the following:

(A) The finance subsidiary fails to pay dividends for at least one dividend period;

(B) Authorization is sought for any merger, consolidation, or reorganization of the finance subsidiary or its parent association (except in a supervisory case) in which the issuing finance subsidiary or its parent association is not the survivor and the net worth of the resulting finance subsidiary or parent association available for payment of any class of preferred stock is less than the net worth available for such class prior to the merger, consolidation, or reorganization;

(C) Authorization is sought to create a class of preferred stock having a preference or priority over an outstanding class or classes of preferred stock;

(D) Authorization is sought for any action that would adversely change the specific terms of a class of preferred stock;

(E) Authorization is sought to increase the number of shares of a class of preferred stock; and

(F) Authorization is sought for the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specified financial standards.

(e) *Transfer of proceeds of the issuance of securities.* All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any proceeds held in the subsidiary for collateral maintenance, fee payment, or any other necessary expenses related to the finance subsidiary's securities issuances or collateralizing assets) associated with the issuance of securities by the finance subsidiary and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent association; by the repayment of any loan made by the parent to the finance subsidiary as part of the capitalization of the subsidiary; or by the purchase of assets of, or liabilities issued by, the parent association (subject to the

limitations of paragraph (c)(1) of this section on the aggregate and per-issuance transfers by a parent association to a finance subsidiary): *Provided*, that any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other security that would otherwise be considered to be regulatory net worth as defined in § 561.13 of this chapter shall not, if issued by the parent association to its finance subsidiary, be included in the parent association's regulatory net worth unless (1) no assets of the parent association have been transferred to the finance subsidiary, (2) the transaction transfers the risk of equity ownership to parties other than the finance subsidiary or any insured institution, and (3) the Board approves the transaction. The remittance of proceeds to a parent insured institution by any method shall not reduce the amount of assets transferred to a finance subsidiary for purposes of the transfer limitations of paragraph (c)(1) of this section. If an association on December 31, 1985, has exceeded the transfer limitations of paragraph (c)(1) (i) or (ii) of this section due to deducting from the amount of the association's assets transferred any amount of remitted proceeds from a finance subsidiary's securities issuances, the association shall not make additional transfers (unless necessary for collateral maintenance) until the association is in compliance with such transfer limitations.

(f) *Notification to the Principal Supervisory Agent.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of any additional securities by an existing finance subsidiary, the board of directors of the parent association, or a duly authorized executive committee thereof, shall submit written notification to the association's Principal Supervisory Agent specifying:

(i) The name of the finance subsidiary;

(ii) The jurisdiction of incorporation of the finance subsidiary;

(iii) The amount of assets of the parent association to be transferred (including the terms of any guarantee to be issued by the association or any affiliate of the association); the current book value of all such assets previously transferred to the finance subsidiary; and the amount representing 30 percent of the current book value of the parent association's total assets; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the finance subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or divided rates and yields, or the range thereof, and the frequency of payments on the finance subsidiary's securities;

(D) The minimum denomination of the finance subsidiary's securities; and

(E) Where the finance subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a finance subsidiary, its parent association shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance of securities to its Principal Supervisory Agent.

(3)(i) Any association that fails to meet its net-worth requirement, as provided in § 563.13 of this chapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through an existing finance subsidiary without the prior written approval of the association's Principal Supervisory Agent. To obtain the written approval of the Principal Supervisory Agent, the board of directors of the association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (f)(1) of this section, as well as any additional information required by the Principal Supervisory Agent.

(ii) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (f)(3)(i) of this section or any additional information by an association subject to paragraph (e)(3)(i) of this section, the Principal Supervisory Agent shall notify the applicant in writing either that all information required has been filed or that additional specified information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(iii) The Principal Supervisory Agent shall approve the application of an association, subject to the requirements of paragraph (f)(3)(i) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of additional securities by an existing finance subsidiary is likely to affect adversely the financial condition or the safe and sound operation of the parent association. An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Board. The association shall file its petition with the Office of the Secretary to the Board and shall send a copy to the Principal Supervisory Agent. The Board shall grant or deny a petition for reconsideration filed pursuant to paragraph (f)(3)(iii) of this section in writing within 30 days of receipt. If the Board does not deny such a petition for reconsideration within the prescribed time, the Board shall be deemed to have granted the petition for reconsideration.

(g) *Examination of finance subsidiaries.* A finance subsidiary shall agree in writing to permit and to facilitate examinations and to pay any association costs of such examinations as the Board may deem necessary or appropriate.

SUBCHAPTER D—FEDERAL SAVINGS AND LOANS INSURANCE CORPORATION

PART 563—OPERATIONS

3. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend § 563.9–3 by inserting after paragraph (b)(2)(ii) of § 563.9–3 the following paragraph (b)(2)(iii):

§ 563.9-3 Loans to one borrower.

* * * * *

(b) * * *

(2) * * *

(iii) The amount of assets transferred (as defined in § 563.13–2(a)(3) of this part) by an insured institution to a finance subsidiary (as defined in § 563.13–2(a)(4) of this part), subject to the provisions of § 545.82 of this chapter, shall not be subject to the limitations imposed by paragraphs (b)(1) and (b)(2) of this section.

5. Amend § 563.9–8 by adding paragraph (b)(3) to read as follows:

§ 563.9-8 Regulation of direct investment in equity securities, real estate, service corporations, and operating subsidiaries.

* * * * *

(b) * * *

(3) "Finance subsidiary" means a corporation as defined in § 563.13–2(a)(4) of this part.

6. Amend Board Resolution No. 85-949, 50 FR 45988 (Nov. 6, 1985), which revised 12 CFR 563.13(c), by removing the following language from paragraph 2 of Resolution No. 85-949, 50 FR 45989: "by removing the phrase 'reserve requirements of paragraphs (a) and (b) of this section' and inserting in lieu thereof the phrase 'net-worth requirements of this section', and".

§ 563.13 [Amended]

7. Amend § 563.13(g)(1) by adding at the end thereof the following sentence: "Total liabilities shall also include an amount of securities issued through a subsidiary (as defined by § 563.13-2(a)(1) of this part) as required by § 563.13-2 of this part.".

§ 563.13-1 [Amended]

8. Amend § 563.13-1(a)(1) by adding at the end thereof the following sentence: "For purposes of this section, 'total liabilities,' as defined in § 563.13(g)(1) of this part, shall also include an amount of securities issued through a subsidiary (as defined by § 563.13-2(a)(1) of this part) as required by § 563.13-2 of this part.".

9. Add a new § 563.13-2 as follows:

§ 563.13-2 Securities issued through subsidiaries.

(a) *Definitions.* As used in this section:

(1) "Amount of securities issued through a subsidiary" means the net proceeds from the issuance of securities (or the pro-rata portion of the net proceeds from securities issued through a jointly owned subsidiary), other than capital stock issued by a subsidiary to its parent institution, after December 31, 1985, by:

(i) A finance subsidiary as defined in paragraph (a)(4) of this section; or

(ii) An operating subsidiary (as defined in § 563.9-8(b)(9) of this part), a service corporation (as defined in § 561.26 of this subchapter), or any other subsidiary of a state-chartered insured institution not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent institution (unless such a subsidiary demonstrates to its parent institution's Principal Supervisory Agent that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

(2) "Assets collateralizing" or "collateralizing assets" means any assets of a subsidiary (including guarantees of its securities issuance by its parent institution) securing, pledged to, or committed to an amount of securities issued through a subsidiary.

(3) "Assets transferred" means assets of or liabilities issued by an insured institution (including guarantees by an insured institution of its subsidiary's securities issuances) that are transferred or made available by an insured institution (i) to a finance subsidiary as defined in paragraph (a)(4) of this section or (ii) to collateralize an amount of securities issued through a subsidiary as defined in paragraph (a)(1) of this section.

(4) "Finance subsidiary" means (i) a Federal association's subsidiary as defined in § 545.82(a)(3) of this chapter, or (ii) a state-chartered insured institution's subsidiary in compliance with the provisions of § 545.82 of this chapter. Investment by an insured institution in a finance subsidiary as defined in this paragraph is not subject to the provisions of the direct-investment regulation set forth in § 563.9-8 of this part.

(5) "Insured institution" means an institution as defined in § 561.1 of this subchapter, including institutions subject to § 543.11-1 of this chapter, but excluding Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation.

(6) "Securities" means any securities as defined in § 561.41 of this subchapter.

(b) *Issuances affected.* (1) the amount of securities issued through a subsidiary does not include proceeds from securities:

(i) Offered or sold by a subsidiary, either directly or through a third party intermediary, if such offer or sale terminated no later than March 3, 1986, and if the offer or sale was preceded by (A) a registration statement filed with the Securities and Exchange Commission on or before December 31, 1985, or (B) for securities exempt from such registration requirements, an offering document relating to the securities offered filed with an appropriate regulatory agency or lawfully provided to prospective purchasers on or before December 31, 1985.

(ii) Issued in connection with a borrowing, when a note evidencing such borrowing was executed on or before December 31, 1985.

(2) The amount of securities issued through a subsidiary includes the renewal, extension, or rollover of securities after December 31, 1985, unless such a transaction was undertaken pursuant to a binding written contract with a term of one year or less which was executed and became effective on or before December 31, 1985.

(c) *Inclusion of securities issuances through a subsidiary in computation of an insured institution's net-worth requirement.* In calculating total liabilities under § 563.13(g)(1) of this part, the amount of securities issued through a subsidiary shall be included in the total liabilities (as defined in § 563.13(g)(1) of a parent insured institution for purposes of computing such insured institution's net-worth requirement and its compliance with § 563.13-1 of this part: *Provided,* that such amount shall not include an amount equal to the net proceeds from the issuance of securities:

(1) Collateralized by assets that have substantially the same duration as the securities issued and have a relationship to the issued securities such that the duration match will be maintained within the Board's prescribed parameters throughout the life of the securities without active management; or

(2) Remitted in exchange for a liability issued by a parent institution which is otherwise included in the parent institution's total liabilities pursuant to § 563.13(g)(1) of this part.

(d) *Certification of duration analysis.* Within 10 days after an amount of securities is issued through a subsidiary, such subsidiary shall furnish its parent insured institution's Principal Supervisory Agent with a written certification of the accuracy and validity of the duration measurement required by paragraph (c)(1) of this section. The subsidiary shall also send a copy of the certification to the Director, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Such certification shall specify:

(1) The duration calculation (in complete or summarized form);

(2) The underlying financial assumptions, including those related to interest rates, maturity, and prepayment;

(3) Any different calculations or assumptions being relied upon for purposes of the rating of the securities by a national rating agency; and

(4) The certification of accuracy and validity by the subsidiary and by any organization performing the duration analysis on behalf of the subsidiary.

(e) *Notification to the Principal Supervisory Agent.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of securities through a subsidiary as described in paragraph (a)(1)(ii) of this section, the board of directors of the parent insured institution, or a duly authorized

executive committee thereof, shall submit written notification to the institution's Principal Supervisory Agent specifying:

(i) The name of the subsidiary conducting the issuance and the nature of the subsidiary (*e.g.*, service corporation organized pursuant to state law primarily for direct real estate investment);

(ii) The jurisdiction of incorporation of the subsidiary;

(iii) The amount of assets of the parent insured institution to be transferred (including the terms of any guarantee to be issued by the institution or any affiliate of the institution); the current book value of all such assets of the subsidiary; and the percentage that the amount of assets to be transferred represents of the current book value of parent institution's total assets on an unconsolidated basis; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(D) The minimum denomination of the subsidiary's securities; and

(E) Where the subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a subsidiary, its parent institution shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance to its Principal Supervisory Agent.

(3) Any insured institution that fails to meet its net-worth requirement as provided in § 563.13 of this part, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through a subsidiary described in paragraph (a)(1)(ii) of this section without the prior written approval of the insured institution's Principal Supervisory Agent. To obtain the written approval of the Principal Supervisory Agent, the board of directors of the institution, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (e)(1) of this section, as well as any additional information required by the Principal Supervisory Agent.

(4) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (e)(3) of this section or any additional information by an institution subject to paragraph (e)(3) of this section, the Principal Supervisory Agent shall notify the applicant in writing either that all information required has been filed or that additional specific information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(5) The Principal Supervisory Agent shall approve the application of an institution subject to the requirements of paragraph (e)(3) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of an additional amount of securities issued through a subsidiary described in paragraph (a)(1)(ii) of this section is likely to affect adversely the financial condition or the safe and sound operation of the parent institution. An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Corporation. The institution shall file its petition with the Office of the Secretary to the Board and shall send a copy to the Principal Supervisory Agent. The Corporation shall grant or deny a petition for reconsideration filed pursuant to paragraph (e)(3) of this section in writing within 30 days of receipt. If the Corporation does not deny such a petition within the prescribed time, the Corporation shall be deemed to have granted the petition for reconsideration.

PART 571—STATEMENTS OF POLICY

10. The authority citation for Part 571 is revised to read as follows:

Authority: 12 U.S.C. 1725, 1726; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

§ 571.5 [Amended]

11. Amend § 571.5(a) by inserting after the third sentence thereof the sentence: "Transactions in accordance with § 545.82 of this chapter between a Federal association or a state-chartered insured institution and a finance subsidiary as defined in § 563.13–2(a)(4) of this subchapter shall not be considered 'transfers' for purposes of this paragraph.".

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

12. The authority citation for Part 584 is revised to read as follows:

Authority: Sec. 12 U.S.C. 1730a as revised, unless otherwise noted.

13. Amend § 584.3 by adding new paragraphs (c)(3) and (h) as follows:

§ 584.3 Transactions with affiliates.

* * * * *

(c) *Exclusion of consideration or payments in transactions with affiliates.* * * *

(3) The amount of the consideration given or received or required to be paid in the future, or the payments made, by the institution in connection with any such transactions, agreements, or understandings with its finance subsidiary as defined in § 563.13–2(a)(4) of this chapter.

* * * * *

(h) *Finance subsidiaries as affiliates.* For purposes of this section, a finance subsidiary, as defined in § 563.13–2(a)(4) of this chapter, of an insured institution shall be deemed to be a service corporation subsidiary.

14. Amend § 584.6 by redesignating paragraph (c)(2) as paragraph (c)(3) and adding a new paragraph (c)(2) as follows:

§ 584.6 Holding Company Indebtedness.

* * * * *

(c) *Exemptions from computation of 15 percent limitation.* The Corporation, without limitation upon and in addition to the exemption contained in paragraph (a)(2) of this section, hereby approves without application the issuance, sale, renewal or guarantee of any debt security or the assumption of any debt incurred:

* * * * *

(2) By a finance subsidiary (as defined in § 563.13–2(a)(4) of this chapter) of an insured institution that is a subsidiary of a savings and loan holding company.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Soonyers,

Secretary.

[FR Doc. 85–30639 Filed 12–30–85; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Parts 561, 563, and 571

[No. 85-1154]

Classification of Assets

Date: December 9, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting a new method of classifying certain assets and revising its regulation regarding the re-evaluation of real estate assets.

DATES: This regulation is effective January 30, 1986. Comments must be received by March 3, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Jane W. Katz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377-6782; Francis E. Raue, Financial Analyst, Office of Examinations and Supervision, (202) 377-6360; Susan McC. van den Toorn, Attorney, Office of General Counsel, (202) 377-6525, at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is authorized, pursuant to section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). Pursuant to this authority, the Board has the responsibility to examine and evaluate insured institutions' assets and to require reporting and to prescribe treatment of assets for regulatory evaluation purposes. Section 403(b) of the NHA also requires all insured institutions to maintain adequate reserves established in accordance with FSLIC regulations. *See* 12 CFR 563.13.

The Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97-320, 96 Stat. 1469 (1982), granted new powers to federally chartered savings and loan associations and mutual savings banks ("Federal associations"). Section 325 of the DIA amended section 5(c)(1)(R) of the Home Owners' Loan Act ("HOLA") to authorize Federal associations to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes. 12 U.S.C. 1464(c)(1)(R). The Board implemented this authority by adopting final regulations on April 26, 1983. Board Res. No. 83-241, 48 FR 23032 (May 23, 1983). State laws, which have generally followed or exceeded federal law in this area, have similarly expanded the investment authorities for state-chartered thrift institutions.

Prior research by Board economists in the Board's Office of Policy and Economic Research ("OPER") confirmed the greater risk of commercial lending.[1] After two years of reviewing insured institution's commercial loans, the Board has determined that its traditional method of classifying assets is not effective for most commercial loans. The current classification system, which is keyed to the timely receipt of periodic payments, evolved primarily to classify owner-occupied home loans and has been sufficient for that limited purpose. Under this system a loan that is contractually delinquent is treated as a scheduled item. 12 CFR 561.15, 561.16. An institution's minimum net-worth requirement is increased by 20 percent of such scheduled items. 12 CFR 563.13(g)(5)(ii). The Board believes, however, that this system does not adequately identify credit weaknesses in commercial loans, whose payment schedules and other indicia of "current" status are often of a different nature.

The Proposed Rule

To address this concern, on June 21, 1985, the Board proposed to adopt a new method of classifying certain commercial loans and to revise its regulation regarding the re-evaluation of real estate assets by examination staff. Board Res. No. 85-504, 50 FR 27290 (July 2, 1985). Specifically, the Board proposed to adopt the basic concepts contained in the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" ("Uniform Agreement"), issued in revised form on May 7, 1979, as a Joint Statement of the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("FRB"), and the Conference of State Bank Supervisors. Under the proposal, "problem assets" would be classified as Substandard, Doubtful, or Loss. As proposed, this new classification system would apply to commercial loans of the type described in 12 U.S.C. 1464(c)(1)(R) and 12 CFR 545.46, excluding commercial loans secured by first liens on real estate and other assets which could be described as "commercial, agricultural or business" loans but which have long been authorized investments for Federal associations and many state-chartered associations and which have been assessed under the "scheduled items" approach. Under the proposed rule, "problem assets" classified as Substandard would be treated as a type of scheduled item, and the institution's minimum net-worth requirement would be increased to reflect 20 percent of such loans. "Problem assets" classified as Doubtful or Loss, however, would require establishment of a specific reserve (50 and 100 percent, respectively), which would be drawn from the institution's net-worth accounts and thus would lower the amount of an institution's actual regulatory net worth, as specific reserves do not count as eligible net-worth items.

The Board's proposal also specifically requested public comment on whether the classification system should apply to other assets. For example, the Board solicited comments on whether the classification system should be applied to nonreal-estate-secured commercial loans, all types of commercial loans, all loans without meaningful periodic payment schedules, and other investments, such as those in securities and subsidiaries. The Board also proposed to revise the appraisal provision in the Board's examinations and audits regulation for insured institutions, 12 CFR 563.17-2(b). The proposed change would authorize evaluations that take into consideration economic factors other than direct appraisal of the property that directly affect the immediate value of the assets to the insured institution.

The Board received 56 comment letters on the proposal. Forty-two comments were received from insured institutions. Of the remainder, one was from a law firm representing a group of twenty insured institutions, one was from a brokerage firm, two were from private consulting groups, two were from state supervisors of financial institutions, four were from trade associations, and four were from federal agencies.

Generally, the comments supported the establishment of a new classification system for commercial loans, as defined in the proposal. Those supporting the proposal recognized the

[1] G. Stacy Sirmans, OPER, "Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments" (1984), and "A Reestimation of a Thrift Institution's Efficient Frontiers" (1984).

need for a commercial loan classification system and commended the Board for proposing the system used by the bank regulatory agencies. In fact, only three commenters opposed the proposed application of the classification system. The Board also received support for the proposal from the FRB, the FDIC, the OCC, and the Federal Home Loan Bank System.

With respect to the proposal for re-evaluation of real estate, a majority of commenters opposed it. They believed that the proposed amendment would give examiners too much discretionary authority and could lead to arbitrary decision-making.

The Board has carefully considered all comments, which are discussed more fully below, and has determined to adopt the regulation with several significant modifications.

Scope of the Final Classification Regulation

The Board is adopting without change the proposed basic framework for classification of assets contained in the Uniform Agreement. As noted in the proposal, the asset classifications set forth in the Uniform Agreement are expressions of different degrees of a common factor: Risk of nonpayment. All assets involve some risk, but the degree varies greatly. The final regulation classifies problem assets as Substandard, Doubtful, or Loss. The final regulation also defines and discusses each of these categories, largely following the language of the Uniform Agreement.

The final regulation applies the classification system to all assets except loans secured by one-to-four-family, owner-occupied homes, consumer credit, and securities. *See* 12 CFR 561.14, 561.38, 561.41. Covered assets may fall within more than one category, and a portion of an asset may remain unclassified. As in the proposal, assets classified Substandard would be treated as a type of scheduled item, increasing the institution's minimum net worth requirement by an amount equal to 20 percent of the dollar amount of the Substandard asset. Assets classified Doubtful or Loss would require establishment of specific reserves (50 percent for Doubtful and 100 percent for Loss). The reserve would be drawn from the institution's net worth, thereby lowering actual regulatory net worth. The Principal Supervisory Agent ("PSA") or a Supervisory Agent ("SA") designated by him or her has the authority to approve or disapprove the examiner's classification. In the event of any disagreement over the value of reappraised real estate, the PSA has final authority to approve or disapprove appraisals and valuations.

Substandard

The final regulation defines Substandard assets as assets which must have a well-defined weakness or weaknesses. Such an asset is inadequately protected by current net worth and paying capacity of the obligor or pledged collateral, if any. It is characterized by the distinct possibility that the insured institution will sustain some loss if the weaknesses are not corrected. Weaknesses are to be based upon objective evidence. The possibility that liquidation would not be timely requires classification as Substandard even if there is little likelihood of total loss. If the deficiencies are not corrected, the insured institution may sustain some loss.

Assets classified Substandard have characteristics such as (1) collateral which is not subject to adequate inspection and verification; (2) the primary source of repayment is gone and the lending institution is relying upon the secondary source; (3) a loss does not seem likely, but sufficient problems have arisen to cause the insured institution to go to abnormal lengths to protect its position in order to maintain a high probability of repayment; (4) obligors are unable to generate enough cash flow for debt reduction; (5) deterioration in collateral; (6) flaws in documentation, leaving a lending institution in a subordinated or unsecured position; or (7) with regard to assets secured by real estate, the appraisal does not conform with Board appraisal standards, or the assumptions underlying an appraisal which conformed with the Board's appraisal standards at the time it was made are demonstrably incorrect. In addition, Board examiners should also consider the following in determining whether a Substandard classification is appropriate: (1) Restructuring of loans regarding payment schedule or term, collateral, or in any other manner adverse to the institution; (2) deterioration in the borrower's affairs sufficient to cause the institution to look to the sale of collateral for repayment; (3) loans to unprofitable or undercapitalized businesses; (4) special problems arising from conditions of a given industry; or (5) significant deterioration in market conditions.

The Board notes that it is incumbent upon the examiner to avoid classification of sound assets. The presence of one or these factors does not mandate that the asset be classified as Substandard if the examiner does not believe that the presence of that factor indicates a well-defined weakness that jeopardizes the timely liquidation of the asset, or realization on the collateral, at the asset's book value.

Doubtful

The final rule states that assets classified Doubtful would exhibit discernible loss potential if some loss, but not complete loss, seems very likely but there is still sufficient uncertainty that permits the asset to remain on the books at its full value. In addition, a Doubtful asset could reflect the fact that the primary source of repayment is gone and serious doubt exists as to the quality of the secondary source of repayment.

The possibility of loss on a Doubtful assets is high, But because of certain important and reasonably specific pending factors which may work to the strengthening of the asset its classification as an estimated loss is deferred until its more exact status may be determined.

A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resove pending factors. If pending events did not occur and repayment were deferred awaiting new developments, a Loss classification normally would be warranted. In the case of assets secured by real estate, if an appraisal conforms to Board appraisal standards but the examiner, in consultation with the District Appraiser, determines the assumptions underlying the appraisal are demonstrably incorrect (for example, market conditions have made the assumptions underlying the appraisal materially overoptimistic) and the asset has an additional, distinct weakness inherent in an asset classified Substandard, the asset should be classified Doubtful. Additionally, in the absence of an appraisal, the asset should be classified Doubtful.

Loss

Assets classified Loss are considered to be uncollectible and of such little value that their continuance as assets without the establishment of a specific reserve is not warranted. A Loss classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off all or a portion of a basically worthless asset even though partial recovery may be effected in the future.

Summary and Discussion of the Comments

1. Acquisition, Development, and Construction ("ADC") Loans, Nonresidential and Multifamily Residential Loans, and Investments

The Board, as noted above, specifically solicited public comments on whether the classification system should apply to other assets, particularly those without meaningful periodic payments. Commenters that supported a broadening of the regulations argued that real estate-backed commercial loans should be classified by the same standards that are used to classify other commercial loans. One comment favored applying the proposed classification system to all assets because the system could provide clearer and more definite guidelines as thrifts engage in more sophisticated and complex commercial lending. The OCC, the FRB, and the FDIC also favored broadening the application of the classification system to other assets.

One supportive comment noted that many state examiners, who review both state banks and federally insured, state-chartered thrifts, are familiar with the bank regulatory agencies' classification system and have applied it to all assets, and that such experience would be of benefit to the Board. Additionally, it was noted that because commercial loans comprise only a small portion of an institution's portfolio, it would be important to apply the new classification system to all assets in order to arrive at a uniform measure of overall asset quality.

Twenty-four commenters opposed broadening the scope of the regulation, with twenty-one of those commenters specifically opposing the inclusion of real estate assets. Generally, these commenters argued that the application of the classification system should be limited to the commercial loans authorized by HOLA 5(c)(1)(R) because the Board's traditional examination techniques—including the use of appraisals and the inclusion of scheduled items in the calculation of an insured institution's minimum net-worth requirement—are sufficient to protect insured institutions and the FSLIC fund from losses associated with all other types of assets.

In particular, one commenter urged the Board not to apply the system to commercial assets secured by real estate or other investments such as investment securities and investments in subsidiaries because the Board's traditional methods of classifying assets rely on fairly objective measurements, such as timeliness of payments and the appraised value of the underlying security. By contrast, the Uniform Agreement depends more on subjective measurements, such as the general conditions of the borrower's business affairs and deficiencies in loan documentation. The commenter suggested that the Board should rely on subjective measurements only when the objective standards of its current procedures are demonstrably inadequate.

The Board believes the current procedures are demonstrably inadequate for certain assets. ADC loans and similar loans and investments have long been recognized as relatively risky assets. These assets are often characterized by very low or nonexistent borrower equity in the project, high fee income, the payment of interest through an interest reserve, and "equity kickers" that give the lender a percentage of any profit. Many problem ADC loans are improperly reported by thrifts to the Board as loans when, under proper accounting principles, they are in economic substance direct investments. Because of the absence of any substantial borrower equity, the lender must generally depend upon the success of the underlying project to receive payment of the principal and interest on an ADC loan. The absence of borrower equity also increases the incentive for a borrower to walk away from a failing project, absent a firm personal guarantee backed by significant assets. All of these factors make ADC loans and similar investments far riskier than conventional thrift investments. The high fees, interest rates, and equity kickers so common to these assets exist because of the higher risks they pose. Borrowers must pay a high rate of return to compensate the lender for the increased risk of ADC loans and analogous loans and investments. A recent study by Professors Crockett, Fry, and Horvitz [2] confirmed this link between increased expected rate of return and risk in Texas thrifts they examined. Statistics computed by the OPER have found that thrifts with very high levels of ADC-type loans reported substantially higher levels of problem assets (real estate owned ("REO") and loans to facilitate sale) than other institutions.[3]

The Board's supervisory experience supports these statistics. The institutions that have failed recently and caused the largest losses to the FSLIC have all involved substantial losses from ADC-type loans, many of which were actually direct investments. Examples include Empire Savings and Loan Association of Mesquite, Texas, San Marino Savings and Loan Association of San Marino, California, Beverly Hills Savings and Loan Association of Beverly Hills, California, and Sunrise Savings and Loan Association of West Palm Beach, Florida.[4] The bank regulatory agencies have increasingly experienced similar problems with real estate loans.[5] Moreover, the known problem institutions likely to cause future losses to the FSLIC often have substantial troubled ADC and other investments.

In one case the institution's assets skyrocketed, from under $100 million in June 1982 to over $1 billion in June 1985. Its phenomenal growth began late in 1982 with a dramatic increase in ADC loans. By December 1983, its construction loans were over 80 percent of its total mortgage portfolio. These construction loans were largely 100 percent financed. The borrower normally had no cash equity in the project, and the institution's fees as well as the interest came out of the loan proceeds. Even if the borrower experienced problems (for example, construction seriously behind schedule or cost overruns) as long as the periodic interest payments were paid from the

[2] "Equity Participations in Real Estate by Savings and Loans: Implications for Profitability and Risk," OPER Invited Working Paper No. 52 (May 1985).

[3] Memorandum from Joe McKenzie to Eric Hemel, Director, OPER, dated December 6, 1985. For the first half of 1985, the average return on average assets for institutions larger than $100 million in assets was 0.274 percent. The top 40 holders in relative terms of ADC loans had an average return on average assets of 0.597 percent. This difference is not significant in a statistical sense. However, the sum of REO plus loans to faciliate the sale of REO averaged 1.029 percent of assets for all institutions larger than $100 million in assets, but it averaged 1.762 percent of assets for the top 40 holders of ADC loans. This difference is statistically significant at the approximate 95 percent confidence level. Institutions larger than $100 million in assets which ranked among the top 40 institutions in proportion of residential and nonresidential construction loans and nonresidential mortgages also were associated with statistically significant increased levels of REO plus loans to facilitate the sale of real estate.

[4] By March 14, 1984, when the Board found Empire Savings and Loan to be insolvent and ordered that it be liquidated, it had approximately 317 outstanding ADC-type loans on its books, substantially all of which were delinquent. Additionally, the institution had 658 loans on its books that financed the purchase of completed condominium units, most of which were similarly delinquent. In accordance with generally accepted accounting principles, these assets were reclassified from loans to real estate investments, and the institution was required to establish the appropriate loss reserves and to make the necessary adjustments to net worth. At the time the receiver was appionted, the restated net worth as of December 1983 was estimated to be negative $22.4 million, a substantial decline from the reported net worth of positive $20.8 million.

[5] *See* "Guidelines for Troubled Real Estate Loans," Examining Circular of the OCC (Oct. 30, 1985).

loan in process the asset would not be listed as a scheduled item. In the March 1984 examination, scheduled items were 16.8 percent of assets. In some cases, after the loan in process account had run out and the loan became delinquent, the institution immediately refinanced the loan, advancing funds to pay the interest and bring the loan current. In such cases, the institution avoided establishing the reserves that would be required for scheduled items, and, although the examiner saw serious problems in the credit file, he had to order a reappraisal to force the institution to write down the asset.

As this example indicates, the Board's current scheduled items approach to identifying problem ADC loans and similar assets is completely inadequate to deal with such loans when there are no real periodic payments. As noted, many such loans have nominal periodic "paper" payments from an interest reserve. Such loans cannot become delinquent as long as the interest reserve lasts.

Indeed, ADC loans and similar assets can allow thrifts to report dramatic profitability from large up-front fees and high interest rates credited from an interest reserve at the same time that the underlying project becomes a disaster. Empire reported record profits at the very time that it in fact became hopelessly insolvent. Reported profits at thrifts with high levels of ADC loans and similar assets can be grossly exaggerated. This is consistent with the OPER's findings that thrifts with very high levels of ADC loans report higher net income and higher rates of REO and loans to facilitate sales, and that thrifts with high levels of ADC, commercial, residential and nonresidential construction loans, and multifamily and nonresidential mortgages all report statistically significant increased percentages of mortgage fee income to operating income compared to other thrifts.[6]

Unfortunately, there can be very substantial lags before the interest reserve runs out and the loan turns sour. Thus, it may be several years, and hundreds of millions of dollars of further improvident investments later, before such loans become scheduled items.[7] Indeed, by growing rapidly, an institution can run a variant of a pyramid scheme whereby it keeps its reported net income positive even after the earlier real estate loans begin to go into default and the thrift plummets into ever greater insolvency in reality (but not on its books). This situation was virtually out of control before the Board amended its net-worth rule. Even after the amendments, however, thrifts with very large ADC portfolios grew roughly 250 percent faster than other thrifts.[8] Other thrifts have avoided defaults by simply refinancing the loans once the interest reserve runs out or by enagaging in a "backscratching" arrangement with another troubled thrift whereby they refinance each other's problem loans to avoid adverse examiner comment.

Despite the virtually complete inability of the current scheduled items approach to identify problem ADC loans and similar assets on a timely basis, many commenters opposed any application of a classification of assets system to such assets. The thrust of these comments was that the classification standards would be too subjective and would grant the examiners almost unchecked powers to classify an asset. Most commenters suggested that the Board rely on scheduled items treatment for residential property and on reappraisals of problem ADC loans and similar assets. This was believed to be a more objective system.

The Board agrees that scheduled items treatment is effective for owner-occupied residential property and with the comments on the desirability of adopting more objective standards for classifying other real estate assets and on the importance of the Board's regulations requiring proper appraisals. To address these latter concerns the Board is adopting a policy statement that sets out criteria for each classification. Although the classification system necessarily entails a certain amount of subjectivity, based upon the history of its use by the bank regulatory agencies the Board believes that the system is extremely effective.

The Board considers the definitive interpretation of its appraisal regulations to be its Office of Examinations and Supervision Memorandum No. R41b ("R41b"), Appraisal Policies and Practices of Insured Institutions and Service Corporations (March 12, 1982). The Board agrees that R41b establishes objective standards for thrift appraisals. Accordingly, the Board has clarified in this final rule the bases for classifying troubled real estate assets, and it refers the reader to the discussion below of the re-evaluation of real estate.

Some commenters pointed out that in order for the classification system to work effectively it will be necessary to train the Board's examiners and supervisory agents to use the classifications. The Board wishes to assure those commenters that examiners and other supervisory personnel will be trained and will be provided with guidelines similar to those used by the bank regulatory agencies.

2. One-to-Four-Family, Owner-Occupied Homes

As noted, the final regulation retains the scheduled items approach keyed to the timeliness of payments for traditional consumer loans, loans for one-to-four-family, owner-occupied homes, and securities, and at the same time incorporates a classification system that has been used effectively by the bank regulatory agencies for ADC loans and similar loans and investments. As a result, the scheduled item treatment for slow loans contained in 12 CFR 561.15 will apply only to consumer loans, loans secured by one-to-four-family, owner-occupied homes, and other slow loans not classified as Doubtful or Loss pursuant to new § 561.16c(b) (2) or (3).

The Board believes a distinction should be made between one-to-four-family, owner-occupied homes and nonowner-occupied dwellings. The source of payments received on a mortagage from an owner-occupant is derived primarily from earnings of the family members. There is a greater likelihood that such payments will be made because of pride in ownership and the stigma associated with delinquency and foreclosure. On the other hand, cash flow to service mortgages of nonowner-occupied units may be derived from sources which are less reliable over an extended period of time. For example, a syndicator can use proceeds from a new project to service old debt instead of outstanding debt of the new project itself. Such schemes can make problem assets for extended periods of time if loan performance is the only classification measure.

[6] Memorandum from Joe McKenzie to Eric Hemel, Director, OPER, dated December 6, 1985.

[7] One institution granted over $160 million in loans during the period between the December 27, 1982, and October 13, 1984, exams, 77 percent of which were ADC loans. The institution funded the closing costs, loan fees, and interest, and in some cases other amounts (as much as $222,370) for unspecified purposes. While the borrowers held legal title to the property, they had *no* equity in the projects. Because the institution funded the interest payments from loan proceeds rather than collecting them from the borrower, the loan would not appear as a scheduled item until the interest reserves were depleted and the loan was contractually delinquent or the institution foreclosed. Combined REO and delinquent assets rose from $1.7 million in June 1982 to $93 million in July 1985, or about 20 percent of assets.

[8] Memorandum from Joe McKenzie to Eric Hemel, Director, OPER, dated December 6, 1985.

3. Consumer Loans

The final regulation also excepts consumer credit from the new classification system. As in the case of owner-occupied homes, the Board's supervisory experience indicates that the scheduled items approach has been a successful means of evaluating the quality of such loans, which are keyed to the timely receipt of periodic payments. The Board will continue to monitor developments in this area, however, and will re-evaluate including such loans in the classification system should experience suggest the need for such modification.

4. Securities

The final regulation would not apply to assets which are securities. The Board believes that while it may be desirable to apply the same classification system to credit provided to a company regardless of the form such credit takes (for example, loan or corporate debt security), it is necessary to review further the implications of applying the classification system to securities. Therefore, the Board is not applying the system to investments in securities at this time.

In excluding securities from the scope of the final classification system, it is generally the Board's intent to exempt equity and debt securities which are readily marketable and whose value can be readily ascertained by reference to widely recognized exchange quotations. The Board recognizes, however, that the broad terminology of its § 561.41 definition of "security," which refers to any "investment contract" and any "participation in any profit-sharing agreement," might be interpreted by institutions to encompass investments in real estate investment trusts, real estate joint ventures, or similar ventures for which no ready market or easily ascertainable market value exists. It is the Board's view that such investments, which are collateralized by real estate, are subject to the same risk factors characterizing real estate loans and investments subject to the classification system, and can be effectively evaluated only by applying the standards set out in the classification system. The Board therefore emphasizes that it will not deem such investments to fall within the "securities" exclusion of § 561.16c for the purposes of this rule. Further interpretations clarifying the scope of the exclusion will be issued as experience with the classification system warrants.

5. Other Assets Especially Mentioned ("OAEM")

Several commenters also urged the Board to adopt the OAEM category used by some of the other banking agencies. Those commenters believed that this category serves a useful function by allowing examiners to note concerns about an asset without requiring its classification. An examiner can highlight in a timely manner those assets that potentially are problem assets through OAEM, and thereby avoid classifying such assets as Substandard and subjecting the institution to the 20 percent increase in its minimum net-worth requirement. The Board has considered this suggestion and has determined not to adopt the OAEM category since it has been the long standing practice of the Board's examiners to report this type of asset as "Loans Subject to Comment."

6. Effect of Classification

A majority of commenters opposed the increase in required minimum net worth of 20 percent of the amount of assets classified as Substandard. Commenters believed that the proposed rule would treat insured institutions more stringently than financial institutions under the supervision of the banking agencies, with the result that insured institutions would be disadvantaged in their competition with commercial banks.

Commenters argued that such reserve requirements would tend to discourage savings institutions from attempting to develop a commercial loan business because of the expense involved. One comment stated that the additional reserve would be onerous because, by definition, a Substandard classification is "characterized by the distinct *possibility* that the insured institution will sustain some loss *if* the deficiencies are not corrected" (emphasis added), and because the possibility of a loss which is not yet defined should be covered by the institution's contingency reserve (that is, a percentage of loan portfolio) based on historical losses. The commenter noted that loans classified as Substandard are not the same as residential real estate scheduled items in that a Substandard loan may not be delinquent because a loan is often classified for negative trends revealed during a credit analysis of a borrower's financial statement. These "deficiencies" may, however, be in the process of correction, and the loan could remain "current" throughout the entire period of credit quality deterioration. This commenter recommended that, if a credit deteriorates to the point where the primary source of repayment is no longer sufficient to cover debt service and the marginal borrowing base of the collateral is not sufficient, the Board should adopt a policy of splitting the classification between Substandard and Doubtful and/or Loss. Finally, the commenter suggested it would be more appropriate to require any increase in the reserve on a case-by-case basis. It was also suggested that the Board consider a modification of the "slow loans" definition so that a loan would not be classified as Substandard if there is a valid business reason for the loan to be past due.

The Board has carefully considered the arguments raised by the commenters and has determined to treat Substandard assets as scheduled items. As noted in the proposed regulation, Substandard assets do not increase banks' net worth requirement comparable to insured institutions' reserve requirement for scheduled items. Banks, however, unlike insured institutions, are subject to variable net-worth requirements based upon the quality of their assets, as determined by bank regulators.

Moreover, the bank regulatory agencies require that all national and state nonmember banks insured by the FDIC, regardless of size, maintain a ratio of capital to total assets of not less that 6 percent and a ratio of primary capital to total assets of not less that 5.5 percent. Other insured banks submitting applications to the FDIC are subject to the same requirements. This minimum capital requirement is for fundamentally sound, well managed banks which have no material or significant financial weaknesses. When the FDIC determines that a bank does not meet this definition, it may determine that a higher minimum primary and/or total capital ratio is required. Because insured institutions generally are required to maintain a ratio of capital to total liabilities of approximately 3 percent, which is substantially lower than the capital requirement for insured banks, the Board believes that it is necessary to impose stricter capital standards on insured institutions with regard to the quality of their assets.

The Board notes that the classification system will, as a commenter suggested, permit assets to be split among the various classifications and that it gives examiners the flexibility to classify a part of an asset which may well be deficient while not classifying the entire assets. Further, the Board believes that the classification system of the bank regulatory agencies deals more effectively with problem assets than

would a modification in the definition of "slow loans." Furthermore, a loan that is past due is not automatically classified as Substandard because being past due is merely one factor in determining such a classification.

The proposal also provided that assets classified as Doubtful or Loss would require establishment of a specific reserve (50 and 100 percent, respectively). The specific reserves would be drawn from the institution's net-worth account and thus would lower the amount of an institution's actual regulatory net worth, as specific reserves do not count as eligible net-worth items. The majority of commenters supported this section of the proposal. Several commenters urged that the Board adopt a "loss reserve approach" rather than requiring specific reserves. Other commenters stated that an institution should not be required to establish reserves until the SA has reviewed and approved the classification and directed the institution, in writing to establish such reserves.

After careful consideration of the comments, the Board has determined that assets classified as Doubtful shall have specific loss reserves of 50 percent of book value established for them. Assets classified as Loss shall have specific loss reserves of 100 percent of book value established for them. However, when an asset secured by real estate has been classified in any of the three categories, and either the Corporation or the insured institution obtains an appraisal that the PSA determines is in conformance with the Board's appraisal standards, the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of treating the asset as a scheduled item or establishing the reserve imposed by the classification system. Similarly, for other classified assets, as long as methodology utilized to arrive at the overvaluation is acceptable to the SA the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of treating the asset as a scheduled item or establishing the loss reserve imposed by the classification system. The remaining portion of the asset will not be classified as Doubtful or Substandard unless there are additional, distinct weaknesses that justify the classification.

The Board wishes to emphasize in response to the comments that in some circumstances an asset may well be classified in more than one category and that a portion of the asset may remain unclassified. In addition, factors such as the coverage of a loan by private mortgage insurance should be taken into account in determining the appropriate reserve requirement when the probability of a full insurance payment is substantial.

An example of proper utilization of the classification system is the case of a company being liquidated, for which the bankruptcy court has approved a plan with a minimum disbursement of 40 percent and a maximum of 65 percent to unsecured creditors, including an insured institution lender. Then the only portion of the credit which is doubtful is the 25 percent difference between 40 and 65 percent. A proper classification of such a credit would show 40 percent Substandard, 25 percent Doubtful, and 35 percent Loss.

7. FASB 15

A question arose regarding the relationship between the proposal and loans which are restructured or modified. Under this rule, as is the case when applying the Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring (June 1977), of the Financial Accounting Standards Board ("FASB") in accordance with generally accepted accounting principles and as applied by the banking regulatory agencies, at the time of restructuring the loan and periodically thereafter the loan and its underlying collateral should be evaluated and allowances for losses should be provided as appropriate to the restructuring.

8. Re-evaluation of Real Estate

The Board also proposed to revise 12 CFR 563.17-2(b), the appraisal provision in the Board's examinations and audits regulations for insured institutions. The proposed rule allowed for evaluations that take into consideration economic factors other than direct appraisal of property that directly affect the immediate value of the assets to the insured institution.

The majority of commenters opposed the re-evaluation of real estate as proposed. They believed that the proposal might lead to arbitrary decision-making by examiners because it was highly subjective and, consequently, they believed that it would give examiners too much discretionary authority. Many commenters believed that certified appraisers were more qualified because the appraisal process is more structured, has more consistent standards, and is more objective. These commenters acknowledged that while there is considerable disagreement over the contents and effectiveness of R41b, it provides a better method of evaluation than the one proposed.

The Board agrees that R41b establishes important objective appraisal standards, and it also agrees with those commenters who desired more objective standards than those proposed for re-evaluating assets secured by real estate. Therefore, the final regulation authorizes examiners to re-evaluate assets in accordance with the newly adopted classification system. The Board believes that this will result in more objective re-evaluations. In this regard, the Board notes that all re-evaluations performed by examiners must be based on substantiated facts and contain sufficient documentation to support the evaluation. Such documentation is necessary in order to provide supervisory authorities with the information needed to order adjustment of charges.

In addition, the Board is amending 12 CFR 563.17-2(b) to provide that a re-evaluation of real estate shall be based on an appraisal as provided by § 563.17-1, except in the following circumstances. A loan or investment that requires an appraisal under the Board's rules but for which the institution has no appraisal in its files shall be classified as Doubtful. If there is an appraisal in the institution's files but it does not conform with the Board's appraisal standards (currently set out in R41b), the asset should be classified as Substandard. If the examiner determines that the assumptions underlying an appraisal that complied with the Board's appraisal standards at the time the appraisal was made are demonstrably incorrect, the asset should also be classified as Substandard. If the examiner determines, with the aid of the District Appraiser, that an appraisal is no longer accurate because the assumptions underlying the appraisal are demonstrably incorrect (for example, because market conditions have rendered these assumptions materially overoptimistic), and that the asset has an additional weakness inherent in an asset classified Substandard, the asset should be classified Doubtful. An asset, or portions thereof, are classified Loss only upon the basis of reappraisals of that asset or substantially identical assets. In sum, the final rule does apply objective standards for classifying problem assets, and in the case of real estate assets those standards do place critical importance on appraisals conforming with the Board's standards.

In addition to applying objective standards, the final rule provides further protection against the fear of arbitrary

classifications by the examiners. It is the SA who is empowered to order a valuation allowance. The express role provided for the District Appraiser in the final rule acts as a further check and balance.

In the event of any disagreement regarding the value assigned in any reappraisal of real estate, the PSA will have the final authority to approve or reject any or all appraisals or valuations.

The Board has determined, however, that it cannot rely solely upon reappraisals as an alternative to adopting a classification system for real estate assets. Currently, the Board must rely on such reappraisals to identify problem real estate assets that are not in default because of interest reserves or refinancings. Sometimes institutions fail to order reappraisals as agreed.[9] Reappraisals typically take many months to conduct. In the Federal Home Loan Bank of Dallas district, the average time to conduct a reappraisal is approximately eight months. Even when the reappraisal is received, it may not comply with R41b, and the entire process may have to begin anew.[10] Problem institutions often refuse to establish loss reserves even when a reappraisal complying with R41b substantiates the loss. The situation becomes a true nightmare in the worst problem thrifts because hundreds of properties may require reappraisal.

In a recent failure, the Board's appointment of a receiver for a severely troubled thrift was substantially delayed by the problem of substantiating losses through reappraisals. In another recent failure, even though the Board was ultimately able to secure reappraisals establishing the need for substantial loss reserves, the thrift refused to establish the reserves and secured a back-scratching takeout loan from another problem thrift for several of the loans that had long been in default. The very act of ordering reappraisals gives months of notice to the worst problem institutions that they need to cover their tracks. The Board's supervisory experience compels the conclusion that continued reliance on reappraisals as the sole means for classifying problem real estate assets would be disastrous for the FSLIC.

The Board is also amending § 563.17-2(c) to provide that if a re-evaluation of assets by an insured institution discloses that any assets of the institution or its service corporation is overvalued on its books, such institution or service corporation shall, at the direction of the SA, make an adjustment of the book value of such asset, and, unless otherwise directed by the SA, such adjustment shall be made by establishing and maintaining a specific reserve in an amount equal to the overvaluation.

9. Initial Regulatory Flexibility Analysis Comments

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board provided in its proposed regulation an initial regulatory flexibility analysis. As a result of that analysis the Board received a comment letter from the United States Small Business Administration ("SBA") Office of Chief Counsel for Advocacy, which stated that it believed the initial regulatory flexibility analysis published with the proposed rule overlooked the potential deterrent to small business lending that the proposed classification system may have on insured institutions due to the subjective nature of the proposed loan classifications and examination procedures. The SBA suggested that the proposed regulation be amended to recognize the unique problems of insured institutions lending to small businesses. The Board is aware of the unique problems of small businesses and encourages insured institutions to recognize these differences. The Board, however, does not believe it is necessary at this time to amend its proposal to include specific factors to be taken into account for small businesses. If in the future the Board believes such special notice is required, it will issue a proposed amendment.

Effective Date and Solicitation of Comments

The Board believes that it is important to implement this new method of classifying assets expeditiously. Therefore, the classification system for all assets, other than consumer loans, loans secured by one-to-four-family, owner-occupied homes and securities will be effective 30 days following publication of the regulation in the **Federal Register**. Likewise, the Board believes it is important that the re-evaluation of real estate as proposed become effective 30 days after publication.

As noted previously, the Board has determined to include in the coverage of the classification system all assets except consumer loans, loans secured by one-to-four-family, owner-occupied homes, and securities. Since the Board in its proposal specifically requested comments on whether the classification system should also apply to all or some of the loans currently assessed under the "scheduled items" approach, the Board has determined pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 that additional notice and public comment is unnecessary.

The Board, however, solicits further comments on the general scope of the classification system and accordingly is providing for a 60-day comment period after which, if appropriate, the scope may be modified, extended, or otherwise addressed.

Final Regulatory Flexibility Analysis. Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

List of Subjects in 12 CFR Parts 561, 563 and 571

Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 561, 563, and 571 of Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

PART 561—DEFINITIONS

1. The authority citation for Part 561 is revised to read as follows:

Authority: 12 U.S.C. 1724-26, 1730; Reorg. Plan No. 3 of 1947, 3 CFR, 1943-1948 Comp., p. 1071, unless otherwise noted.

[9] In one institution the independent auditors requested that management obtain 72 appraisals on property securing its construction loans. In December 1984, management agreed to order these appraisals. During the February 1985 examination, examiners discovered that management had failed to do so. Moreover, most of the existing appraisals were not in conformance with R41b. As a result, the examiners ordered independent appraisals on 61 of the 72 loans identified by the independent auditors. The losses from the first group of 27 reappraisals requested by the examiner made the institution insolvent.

[10] In one institution, examiners order reappraisals on 5 projects and requested appraisals on others through lead lenders. The institution's auditors also requested 12 reappraisals. On the average, it took 4-6 months for examiners to receive the appraisals they requested, and 6-8 months passed before examiners obtained those ordered by the auditors. Without exception, these reappraisals did not conform to R41b.

2. Amend § 561.15 by revising paragraph (a) as follows. The introductory text of the section is printed for the convenience of the reader.

§ 561.15 Scheduled items.

The term "scheduled items" means:

(a) Assets or portions thereof classified Substandard under § 561.16c of this part (other than loans specified in paragraph (b) of this section), slow consumer credit, and slow loans (other than loans classified Doubtful or Loss under § 561.16c of this part).

* * * * *

§ 561.16 [Amended]

3. Amend § 561.16 by revising the introductory text to read as follows: "With respect to loans on the security of a 'home,' as defined in § 541.14 of this chapter, which is owner-occupied, the term 'slow loans' means:* * *".

4. Add a new § 561.16c as follows:

§ 561.16c Classification of certain assets.

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by an insured institution *except* for loans secured by "homes," as defined in § 541.14, that are owner-occupied, "consumer credit," as defined in § 561.38, and all "securities," as defined in § 561.41 of this chapter.

(b) *Classifications.*—(1) *Substandard.* Assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses. They are characterized by the distinct possibility that the insured institution will sustain some loss if the deficiencies are not corrected.

(2) *Doubtful.* Assets classified Doubtful have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

(3) *Loss.* Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific reserve is not warranted. This classification does not mean that an asset has absolutely no recovery or salvage value, but, rather, that it is not practical or desirable to defer writing off a basically worthless asset even though partial recovery may be effected in the future.

(c) *Effect of Classification.* (1) Except as set forth in paragraph (c)(2) of this section, assets classified Substandard shall be treated as scheduled items, assets classified Doubtful shall have specific loss reserves of 50 percent of book value established for them, and assets classified Loss shall have specific loss reserves of 100 percent of book value established for them.

(2)(i) When an asset secured by real estate has been classified and either the Corporation or the insured institution obtains an appraisal that the Supervisory Agent determines is in conformance with the Board's appraisal standards, the institution shall establish and maintain a loss reserve equal to the amount by which the valuation of the asset on the books of the institution exceeds the value established by such appraisal, instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

(ii) Similarly, for a classified asset not secured by real estate, as long as the methodology used to arrive at the overvaluation is acceptable to the Supervisory Agent, the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

(d) *Delegations and interpretations.* (1) The Principal Supervisory Agent or a Supervisory Agent disignated by him or her shall have authority to approve or disapprove the classification of assets made pursuant to this section.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the Principal Supervisory Agent shall have the final authority to approve or reject any or all appraisals or valuations related thereto.

(3) The Board's Office of Examinations and Supervision shall, from time to time, issue interpretations and other informational material regarding classification of assets. See § 571.1a of this subchapter, containing the Corporation's statement of policy on the classification of assets.

PART 563—OPERATIONS

5. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 USC 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 USC 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

6. Amend § 563.17–2 by revising the title of paragraph (a) and by revising paragraphs (b) and (c) as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* * * *

(b) *Re-evaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as he or she deems advisable or necessary. Any such re-evaluation of real estate shall be based on an appraisal as provided by § 563.17–1 of this subchapter, except that: (1) Re-evaluation of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels; (2) if the appraisal does not conform with Board appraisal standards or the assumptions underlying the appraisal are demonstrably incorrect, the examiner shall classify the asset Substandard in accordance with § 563.16c(b) of this subchapter; (3)(i) if there is no appraisal the examiner shall classify the asset Doubtful in accordance with § 561.16c(b); or (ii) if there is a conforming appraisal but the assumptions underlying the appraisal are demonstrably incorrect and the examiner's analysis has identified a well-defined weakness or weaknesses inherent in an asset classified Substandard, the examiner shall classify the asset Doubtful in accordance with § 561.16c(b) and request the District Appraiser to analyze the asset and the appraisal to determine whether the Doubtful or a Loss classification is appropriate for some portion of the asset.

(c) *Adjustment of book value.* If the re-evaluation of assets by an insured institution or otherwise, as ordered by the Corporation, disclose that any asset of an institution or service corporation is overvalued on its books (exclusive of overvaluation due to fluctuations in value which are caused by changes solely in market interest rates), such institutions or service corporation shall, at the direction of the Supervisory Agent, make an adjustment of the book value of such asset, and, unless otherwise directed by the Supervisory Agent, such adjustment shall be made

by establishing and maintaining a specific reserve in an amount equal to the overvaluation. When an appraisal is required and made in connection with any re-evaluation of assets, the Principal Supervisory Agent shall have the final authority to approve or reject any or all appraisals or valuations related thereto.

* * * * *

PART 571—STATEMENTS OF POLICY

7. The authority citation for Part 571 is revised to read as follows:

Authority: 12 U.S.C. 1725, 1726; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

8. Add a new § 571.1a as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 561.16c of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified. Reserves established by an insured institution for such assets must be based on an appraisal made in accordance with Board appraisal standards and should take into consideration the availability of compensation by private mortgage insurance when the probability of full insurance payment is substantial.

(a) *Substandard.* An asset classified substandard must have a well-defined weakness or weaknesses. A Substandard asset is an asset inadequately protected by the current net worth and paying capacity of the obligor or pledged collateral, if any. It is characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Weaknesses are to be based upon objective evidence. The possibility that liquidation would not be timely requires a Substandard classification even if there is little likelihood of total loss. If the deficiencies are not corrected, the insured institution may sustain some loss. Assets classified Substandard would exhibit one or more of the following characteristics:

(1) Collateral which is not subject to adequate inspection and verification;

(2) The primary source of repayment is gone and the lending institution is relying upon the secondary source;

(3) A loss does not seen likely, but sufficient problems have arisen to cause the institution to go to abnormal lengths to protect its position in order to maintain a high probability of repayment;

(4) Obligors are unable to generate enough cash flow for debt reduction;

(5) Deterioration in collateral;

(6) Flaws in documentation, leaving the lending institution in a subordinated or unsecured position;

(7) With regard to assets secured by real estate, the appraisal does not conform with Board appraisal standards, or the assumptions underlying the appraisal are demonstrably incorrect;

(8) Board examiners may also consider the following in determining whether a Substandard classification is appropriate:

(i) Restructuring of loans regarding payment schedule or term, collateral, or in any other manner adverse to the institution;

(ii) Deterioration in the borrower's affairs sufficient to cause the institution to look to the sale of collateral for repayment;

(iii) Loans to unprofitable or undercapitalized businesses;

(iv) Special problems arising from conditions of a given industry; or

(v) Significant deterioration in market conditions.

It is incumbent upon the examiner to avoid classification of sound assets. The presence of one of these factors does not mandate that the asset be classified Substandard if the examiner does not believe that the presence of that factor indicates a well-defined weakness that jeopardizes the timely liquidation of the asset, or realization on the collateral, at the asset's book value.

(b) *Doubtful.* (1) An asset classified Doubtful would exhibit discernible loss potential if some loss, but not complete loss, seems very likely but there is still sufficient uncertainty to permit the asset to remain on the books at its full value. In addition, a Doubtful classification could reflect the fact that the primary source of repayment is gone and serious doubt exists as to the quality of the secondary source of repayment.

(2) The possibility of loss on a Doubtful asset is high, but, because of certain important and reasonably specific pending factors which may work to the strengthening of the asset, its classification as an estimated loss is deferred until its more exact status may be determined.

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors which may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. In the case of assets secured by real estate, if an appraisal conforms to Board appraisal standards but the examiner, in consultation with the District Appraiser, determines that the assumptions underlying the appraisal are demonstrably incorrect and that the asset has a well-defined weakness or weaknesses inherent in an asset classified Substandard, the asset should be classified Doubtful. Additionally, in the absence of an appraisal, the asset should be classified Doubtful. However, the entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, there is private mortgage insurance and the probability of full insurance payment is substantial).

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset without the establishment of a specific reserve is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of Classification.* (1) Except as set forth in paragraph (d)(2) of this section, assets classified Substandard shall be treated as scheduled items, assets classified Doubtful shall have specific loss reserves of 50 percent of book value established for them, and assets classified Loss shall have specific loss reserves of 100 percent of book value established for them.

(2)(i) When an asset secured by real estate has been classified and either the Corporation or the insured institution obtains an appraisal that the Supervisory Agent determines is in conformance with the Board's appraisal standards, the insured institution shall establish and maintain a loss reserve equal to the amount by which the valuation of the asset on the books of the institution exceeds the value established by such appraisal, instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

(ii) Similarly, for a classified asset not secured by real estate, as long as the methodology used to arrive at the overvaluation is acceptable to the Supervisory Agent, the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining

portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

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12 CFR Parts 563, 563c, and 563g

[No. 85-1197]

Securities Offerings; Federal Savings and Loan Insurance Corporation

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting regulations governing certain offers or sales of securities issued by an institution ("issuer"), where (1) the institution is an "insured institution" as that term is defined in § 561.1 of the Board's Insurance Regulations, (2) the institution is a federally-chartered insured institution in organization, or (3) the institution is a state-chartered institution in organization and is approved for insurance of accounts by the Corporation. The final rules provide that an issuer's offer or sale of securities shall be made only through the use of an offering circular which has been filed with, and declared effective by, the Corporation. Exemptions would be available for offerings (1) made prior to the effective date of the final rules, (2) of securities and transactions which would be exempt from registration under certain sections of the Securities Act of 1933 ("Securities Act") if the issuer were subject to the registration requirements of the Securities Act, (3) of certain collateralized debt securities in minimum denominations of $100,000 or more, (4) complying with the Board's regulations on retail repurchase agreements, except where the issuer has a net-worth deficiency, (5) in conversions from mutual to stock form other than in a supervisory case, (6) in certain non-public offerings, (7) to employees and directors pursuant to a qualified pension, profit sharing or stock bonus plan, and (8) of securities distributed exclusively abroad to foreign nationals. The offering circular is required to comply with certain items of Form OC and Form PS under the Board's Conversion Regulations and with all of the items of the registration form that the issuer could use if it were required to register the securities under the Securities Act. The Board also is amending its regulations governing mutual capital certificates, outside borrowings, and subordinated debt to eliminate offering-circular requirements that would be rendered unnecessary by the final regulations, eliminate the minimum-denomination requirements for outside borrowing and subordinated debt securities, and permit an insured institution or an affiliate to offer or sell its securities in the offices of the insured institution under specified circumstances. Finally, the Board is amending its retail-repurchase-agreement regulations to clarify the offering circular requirements.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Scott E. Bartel, Attorney, (202 377-6963); John P. Harootunian, (202 377-6415), Deputy Director for Securities; Julie L. Williams, (202 377-6459), Associate General Counsel, Director, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 85-822, dated September 13, 1985 (50 FR 38839, September 25, 1985) the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") re-proposed regulations for securities offerings by insured institutions. The re-proposal was essentially a modified version of an earlier proposal adopted by Resolution No. 83-126, dated March 3, 1983 (48 FR 10684, March 14, 1983). The principal modifications made by the re-proposal: (1) Deleted the first proposal's exemption for certain exchange offerings, intrastate offerings, and offerings to employees, officers or directors pursuant to certain stock plans; (2) provided an exemption for certain collateralized debt securities issued in minimum denominations of $100,000 or more; (3) required issuers in a public offering to register under the Securities Exchange Act of 1934; (4) provided that the exemption for a non-public offering is only available upon compliance with the Board's requirements; (5) revised the first proposal's exemption for a non-public offering, from sales to not more than 15 persons to sales to not more than 35 investors having a personal or business relationship with the issuer or who are otherwise sophisticated investors; (6) provided a procedure for shelf-registration; and (7) added provisions for enforcement which provided for the Corporation to direct a rescission offer.

Upon further consideration and in response to the comments received on both the first proposal and the modified re-proposal, the Board is adopting final rules which, *inter alia*, (1) re-instates all of the available exemptions under the Securities Act of 1933 except for section 3(a)(5), the general exemption for thrift securities, and section 3(a)(11), the intrastate offering exemption; (2) provides for a "safe harbor" non-public offering exemption; (3) does not require all issuers making public offerings to register under the Securities Exchange Act of 1934, but instead requires the filing of certain current and periodic reports for a one year period; (4) redefines the term "offer" and "sale" to exclude securities issued upon the exercise of certain warrants and conversion rights; (5) expands the exemption for collateralized debt securities offered by insured institutions; (6) revises the escrow requirement to apply only to offerings made on a best efforts all-or-none or, minimum-maximum basis; (7) defines what constitutes an unsafe or unsound practice within the meaning of the National Housing Act of 1934 and the Home Owners" Loan Act of 1933 in connection with the issuance of securities; and (8) deletes the power of the Corporation to require a rescission offer be made by an insured institution under certain circumstances.

By adopting the final rules, the Board is imposing uniform disclosure requirements on all insured institutions making public offerings of their securities. In doing so, the Board has determined to regulate an area of thrift activity currently left unregulated by an exemption in the Securities Act for securities issued by regulated thrift institutions. The Board has decided to regulate securities offerings by an exercise of its authority over insured institutions and federally-chartered thrifts vested in it by the provisions of the National Housing Act of 1934 and the Home Owners' Loan Act of 1933. (For a detailed discussion of the Board's authority to adopt final rules regulating securities offerings by insured institutions, *see* Resolution No. 85-822 dated September 13, 1985 (50 FR 38839, September 25, 1985.) In this respect, the Board has determined that the imposition of fair and reasonable uniform disclosure requirements for securities offerings by insured institutions would reduce the risk that securities offerings without uniform disclosure requirements would have a

negative effect on the ability of institutions to raise capital and a concomitant adverse effect on the safety and soundness of such institutions and the FSLIC. By adopting final rules regulating public securities offerings in thrift securities, the Board desires to foster integrity, confidence and discipline in the market-place for such securities.

The Board has decided to regulate securities offerings through final rules which require full and adequate disclosure of material information by insured institutions. In deciding on the method of regulation the Board would implement, it considered all three principal methods for securities regulation used in the United States: (1) Regulation solely through anti-fraud provisions; (2) merit regulation; and (3) disclosure requirements. Regulation of securities offerings solely with anti-fraud provisions, however, lacks the uniformity of disclosure desired by the Board. Anti-fraud provisions, in and of themselves, do not ordinarily create an affirmative disclosure obligation. Basically, implicit obligations under the anti-fraud provisions require an issuer who makes certain voluntary disclosure in connection with the sale of its securities to make truthful disclosure and prohibits "half truths" which may mislead investors. However, the anti-fraud provisions do not require an issuer to make *any* disclosure at all nor do such provisions provide any guidance to issuers on what types of disclosure are adequate enough to enable potential investors to make a fully informed investment decision. For these reasons, Congress and almost all of the states have chosen not to rely solely on anti-fraud provisions to regulate securities offerings.

Some states, however, regulate offers and sales of securities on the basis of merit. In these jurisdictions, the state makes a determination that the offering is "fair, just, and equitable" to the investor. Such states, like California for example, will not permit offerings of securities to be made to residents of the state if the offering, in the opinion of the state, is too speculative or otherwise not fair and reasonable to the investor. Such *parens patriae* regulation over securities offerings, however, may take more time and personnel to implement and may otherwise be more burdensome on issuers then regulation on the basis of full disclosure.

As already mentioned, Congress and many of the states have chosen to regulate securities offerings on the basis of disclosure. Full disclosure of material information serves to place the owners of securities on a party, so far as possible, with the management of the institution, and to place the buyer on the same plane, so far as available information is concerned, with the seller. [1] Its fundamental purpose is to substitute a philosophy of full disclosure for the philosophy of *caveat emptor*. [2] As Louis D. Brandeis once wrote, "sunlight is said to be the best of disinfectants, [3] and in the words of Professor Louis Loss, "people who are forced to undress in public will presumably pay some attention to their figures."[4]

Regulation of securities offerings through the final rules' system of full and fair disclosure most effectively implements the desire of the Board to foster integrity, confidence and discipline in the marketplace for thrift securities. The final rules require uniform minimum disclosure be made in public offerings of thrift securities, provide potential investors in thrift securities with adequate information to make fully informed investment decisions, and implement a fair system of disclosure for the issurance of securities by thrift institutions.

Offering Circular Requirement—Section 563g.2

The final rules provide that, unless an exemption is available, no insured institution offer or sell any security issued by it unless such offer or sale is accompanied or preceded by an offering circular which includes certain uniform disclosure and which has been filed with, and declared effective by, the Corporation. The rules also provide for the use of preliminary offering circulars and certain limited pre-filing and post filing public notifications. The offering circular filing requirements are designed to operate consistently with industry practice and, in this respect, attention has been given to make the final rules no more burdensome on thrift institutions than the requirements applicable to other entities subject to the similar registration requirements under the Securities Act.

One person commenting on the proposed rules pointed out that proposed § 563g.2 appeared to prohibit oral offers *after* the filing of the offering circular—an effect inconsistent with the proposed rule's counterpart under the Securities Act. The effect of prohibiting oral offers after the filing of the offering circular would be inconsistent with the industry practice of selling securities wherein oral statements are permitted under the Securities Act after the filing of a registration statement. However, all written offers must be made with a Securities Act prospectus. It was not the Board's intention to be inconsistent with industry practice under the Securities Act. Therefore, the final rules have been revised to provide at § 563g.2(b)(3) that *oral* offers of securities covered by an offering circular made after the offering circular is filed with the Corporation is a "communication not deemed to be an offer" under Part 563g.

Like registration statements filed under the Securities Act, § 563g.6 provides that offering circulars filed by insured institutions are automatically declared effective by the Corporation on the twentieth day after filing or on such earlier date determined by the Corporation. The Board expects that the traditional delaying amendment will be used by insured institutions and, in all but unusual cases, timely requests for acceleration of the effective date will be honored. In this respect, the proposed rules provided that the Corporation could deem an offering circular "not effective" if it determined that the offering circular failed to comply with the requirements of the regulations. On further consideration, however, the Board has revised this requirement of proposed § 563g.6(d) by providing that only if it appears to the Corporation that an offering circular contains a false or misleading statement of material fact, or omits to state facts required to make the disclosure therein not misleading, then the Board itself, as operating head of the Corporation, may pursue any remedy it is authorized to pursue under the National Housing Act of 1934 or the Home Owners' Loan Act of 1933, including, but not limited to, cease-and-desist proceedings after notice and opportunity for a hearing. (See section 5(d) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d); section 407 of the National Housing Act of 1934, 12 U.S.C. 1730). Ordinarily, failure to substantially comply with the disclosure requirements provided for in the final rules will constitute sufficient grounds for the Corporation to refer the institution to the Board for enforcement action under the above standard.

The disclosure required to be included under the final rules essentially consists of the items of required disclosure under the forms for registration that the institution would be eligible to use if it were required to register the securities offering under the Securities Act.

[1] *See*, 77 Cong. Rec. 2918 (1933).

[2] *See, Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151 (1972); *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963).

[3] L.D. Brandeis, Other People's Money, C. 5 ¶1.

[4] L. Loss, Fundamentals of Securities Regulation, 36 (1983).

However, if the institution is not in compliance with the Corporation's regulatory net-worth requirements, then it must provide the disclosures required by the Securities and Exchange Commission's ("Commission") Form S-1. In addition, insured institutions must provide certain limited information required by the Board's Forms OC and PS of the Part 563b. (See 12 CFR 536b.101 and 563b.102). Furthermore, an institution's financial statements must comply with the Commission's Regulation S-X and Part 563c of the Insurance Regulations.

The final rules also provide for administrative procedures necessary to implement the offering circular requirement, including provisions for the number of copies, required signatures and undertakings and the procedure for confidential treatment of certain parts of the public filing. Finally, like registration statements filed with the Commission under the Securities Act, insured institutions making public offerings must file a securities sales report disclosing the use of the proceeds of the offering.

Most of the persons commenting on the proposed rules were generally in favor of modeling the Corporation's securities regulations on the time tested system of regulation implemented by the Commission under the Securities Act. Several comments were received, however, which highlighted areas of the proposed rules which, in their view, appeared to impose burdens significantly greater on insured institutions offering their securities under the proposed rules than the burdens imposed upon similarly situated registrants under the Securities Act. The Board has considered each of these comments and believes that the changes to the proposed rules reflected in the final rules are responsive to the comments received. Some of the most significant changes made in the final rules appear in the exemption provisions discussed below.

Exemptions—Sections 563g.3 and 563g.4

Generally, the final rules will not apply to offers or sales of securities made prior to the effective date of the final rules with certain qualifications and exceptions. As re-proposed, the proposed rules also exempted securities and transactions which would be exempt under sections 3(a) and 4 under the Securities Act, except by reason of sections 3(a)(5) (for regulated savings and loan associations), 3(a)(9) (for certain exchange offerings), 3(a)(11) (for intrastate offerings) and 4(2) (for non-public offerings). Several persons commenting on the re-proposal argued that it was not fair to deprive insured institutions of exemptions generally available to other entities under the Securities Act and that such deprivation would result in unduly burdensome regulation. In addition, failure to provide insured institutions with the availability of the non-public offering exemption generally available under section 4(2) of the Securities Act would subject insured institutions to unnecessary risks by depriving such institutions of alternate legal arguments that an offering is exempt from the offering circular requirements even though it may not have fully complied with the literal requirements, including the notice provisions, of the proposed non-public offering exemption. On reconsideration and in response to the comments received, the Board is re-instating the availability of the general non-public offering exemption provided for under section 4(2) of the Securities Act. In addition, the Board is also reinstating the exemption for exchange offers available under section 3(a)(9) of the Securities Act.

In addition to restoring the above exemptions to the offering circular requirement, the Board has also revised its own non-public offering exemption by making it a "safe-harbor" instead of an exclusive method for exemption. As revised, the final rules provide that offerings complying with either a modified version of the Commission's Regulation D or, in the alternative, the requirements for offers to not more than 35 qualified investors, shall be deemed to be transactions not involving any public offering within the meaning of the non-public offering exemption provided for in section 4 (2) of the Securities Act. Almost all of the persons commenting objected to the pre-offering notice requirement. In response to these comments, the Board has reconsidered the necessity for pre-offering notice requirements and has decided to eliminate such requirements altogether. The "Safe-harbor" exemption still provides a required post sale notice requirement, but has been revised to provide that the exception will not be lost merely because a notice is not timely filed. Section 563g.21 also requires a copy of the offering circular, or similar document, be mailed to the Corporation solely for its information.

Several persons commenting on the proposed rule's 2 year restriction on transfer of securities issued in a non-public offering posited that the restriction was unduly restrictive. In addition, it was suggested that such restriction may have the effect of making the securities "non-legal" investments under institutional fiduciary standards. In response to these comments, the Board has revised the 2 year restriction on transfer to not apply to transfers which would otherwise be exempt from the offering circular requirements if the transfer was made by an insured institution. In addition, several other transfers are specifically identified as not subject to the 2 year restriction, including, *inter alia*, transfers to accredited investors, transfers by gift and transfers to certain members of the transferor's family.

The re-proposal also eliminated the exemption contained in the first proposal for offers and sales to officers, directors and employees pursuant to certain compensation and benefit plans. Many comments were received pointing out that, as re-proposed, the proposed rules would likely require the filing of offering circulars for plans which would otherwise be exempt for registrants under the Securities Act. Upon reconsideration, the Board is adopting in its final rules an exemption for offers and sales to an insured institution's employees or directors pursuant to qualified pension, profit-sharing, and stock bonus plans meeting the requirements of section 401(a) of the Internal Revenue Code ("Code"). There is no requirement that the plans actually be submitted to the Internal Revenue Service so long as the requirements of section 401(a) of the Code are satisfied. Because such qualified plans are subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Board has determined that there is little need to regulate the offer of interests in such plans at this time. Compensation and benefit plans not meeting the requirements of section 401(a) of the Code could still be exempt, however, if they can avail themselves of another exemption generally available.

The re-proposal also added an exemption for debt securities fully collateralized by interests in mortgage notes secured by real property. Several persons commenting on the proposed rules pointed out that the exemption was unnecessarily restrictive and was not consistent with industry practice because government securities and other similar securities are often used initially to collateralize interests in collateralized mortgage pools. Therefore, the Board has revised this exemption in the final rules to include securities issued, or guaranteed as to principal and interest, by the United States, Federal Home Loan Mortgage Association, Federal National Mortgage Association and the Government National Mortgage Association as permissible collateral in addition to

interests in mortgage notes secured by real property. Section 561.21 also requires a copy of the offering circular, or similar document, be mailed to the Corporation solely for its information.

Definitions—Section 563g.1

Numerous comments were received expressing concern over the effect the final rules would have over warrants, options and rights, including convertible securities, which were issued prior to the adoption of the final rules but which may be construed to be continious offers under the final regulations. Generally, an offering of warrants, options or rights, including convertible securities, involves a sale of a security when the option, warrant or right is issued, and again another sale of the underlying security when the option, warrant or right is exercised. Between the issuance of the option, warrant or right and its exercise, a continuous offer is being made and, therefore, may theoretically be subject to the offering circular requirements of the final rules. In an effort to eliminate uncertainty in this area and also to abstain from affecting the expectations of parties to prior contracts, the Board has decided to revise the definition of "offer" and "sale" subject to the final rules by excluding from the definition underlying securities issued upon the exercise of options, warrants, rights and convertible securities. Under the revised definition, the offer and sale of the underlying security occurs only at the time of the offer and sale of the option, warrant, right or convertible security. However, insured institutions required to file an offering circular in connection with such offerings must undertake to provide a copy of the institution's most recent financial statements to persons exercising such options, warrants and rights of conversion.

Escrow Requirements—Section 563g.9

As re-proposed, all offerings made pursuant to the proposed rules would have required the proceeds from the offering be placed in a federally insured escrow account until completion of the offering. Several persons commenting on the re-proposal pointed out that to require such an escrow requirement on all offerings would be inconsistent with the industry practice for underwritten offerings on a firm commitment basis. On reconsideration, the Board has revised the requirement for a separate escrow account to include only offerings made on a best-efforts all-or-none or, minimum-maximum basis. Under the final rules, other offerings may be made without the requirement of an escrow.

Current and Periodic Reports—Section 563g.18

As re-proposed, all insured institutions making public offerings pursuant to the proposed rules would have been required to register under section 12 of the Exchange Act and not de-register for a period of 120 days after one full fiscal year after the offering was made. Upon reconsideration, however, the Board believes that it would be unduly burdensome to require many insured institutions to submit to all of the statutory requirements incumbent upon registrants under the Exchange Act which include the proxy rules, tender offer rules and the insider trading and beneficial ownership reporting obligations. Therefore, in an effort to make the offering circular requirements no more burdensome than the requirements for others under the Securities Act, the Board has revised this provision in the final rules to require certain current and periodic reports be made similar to the reporting obligation imposed by section 15(d) of the Exchange Act on registrants under the Securities Act. In this respect, an issuer not otherwise required to register under the Exchange Act who makes a public offering will be required to file current and periodic reports on Forms 8-K, 10-Q and 10-K.

Unsafe and Unsound Practices—Section 563g.10

Both the original proposal and the re-proposal contained a general anti-fraud provision modeled after the Commission's Rule 10b-5. Many persons commenting on the proposed rules believed that there was no need for an additional anti-fraud provision because insured institutions are already subject to the provisions of Rule 10b-5. The Board has considered these comments and has made certain revisions to the anti-fraud provision in the final rule to clearly reflect the intention of the Board. First, it is not the intention of the Board to merely duplicate or limit the applicability of the Commission's Rule 10b-5. Instead, the Board is making clear that the making of materially false or misleading statements or material omissions in connection with the purchase or sale of thrift securities will constitute an unsafe and unsound practice within the meaning of the National Housing Act of 1934 and the Home Owners' Loan Act of 1933. In this respect, the anti-fraud provision was modeled after the Commission's Rule 10b-5 to make it more clear exactly which types of mistatements and omissions are covered by the rule. However, it is not the Board's intention to create any private rights of action by promulgating the rule. On the other hand, the Board does intend that all of the defenses available under the Commission's Rule 10b-5 would also be available under the final rule. In addition, the final rule is applicable only to those persons over whom the Board has jurisdiction pursuant to the National Housing Act of 1934 and the Home Owners' Loan Act of 1933. In comparison, the Commission's Rule 10b-5 applies to all persons who may participate in connection with the purchase or sale of any security.

Rescission Offers—Proposed Section 563g.20

The re-proposal provided for the power of the Corporation, by delegated authority, to require insured institutions to do a rescission offer if it determines that a securities offering was made in violation of the rules. Several persons commenting on the re-proposal expressed grave concerns over the Corporation's authority to direct a rescission offer without providing the institution the opportunity for a hearing. Upon re-consideration, the Board has decided to delete this provision. However, other revisions made in the final rules make it clear that the Corporation may refer an insured institution to the Board's Office of Enforcement to seek an appropriate remedy under the Board's enforcement powers when it appears to the Corporation that an offering circular contains any untrue statement of material fact, or omits to state material facts required to be disclosed under the circumstances in order to make other statements made therein not misleading. Failure to substantially comply with the disclosure requirements of the final rules will constitute grounds for such referral.

Availability of Interpretive Advice—Section 563g.15

The final rules adopt the proposed rule's provision for requests to the Corporation for interpretive advice. Many persons commenting on the proposed rules believed clarification was necessary in certain instances. For example, whether the Corporation will follow the interpretations of the Commission concerning offerings to foreign nationals, whether a particular debt instrument is fully collateralized under the exemption set forth in § 563g.3(f) or whether a particular offering falls within the grandfather exemption set forth in § 563g.3(a) are all areas where the facts and circumstances of each case may be relevant to the

ultimate determination of the issues involved. Therefore, the Corporation will give interpretive advice on these areas, and any other area of the final rules, when requested to do so by persons following the procedures set forth in § 563g.15.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in Supplementary Information regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in Supplementary Information regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board rejects the alternatives discussed above in Supplementary Information for the reasons given therein.

List of Subjects in 12 CFR Parts 563, 563c, and 563g

Accounting, Savings and Loan Associations, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 563 and 563c and adds Part 563g under Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The statutory authority for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401-405, 407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 563.7-4 [Amended]

2. Amend § 563.7-4 by removing paragraphs (e), (f), and (h); and redesignating paragraphs (g), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), and (i), respectively.

§ 563.8 [Amended]

3. Amend § 563.8 by removing paragraphs (f), (g), and (h); and redesignating paragraph (i) as paragraph (f).

§ 563.8-1 [Amended]

4. Amend § 563.8-1 (d) by removing paragraph (d) (1) (v) and redesignating paragraph (d) (1) (vi) as (d) (1) (v).

5. Amend § 563.8-4 by revising paragraph (b)(5), as follows:

§ 563.8-4 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(5) *Disclosure.* An institution issuing repurchase agreements to the public shall provide each prospective repurchase agreement purchaser with an offering document which shall contain full and accurate disclosure of all material information regarding the repurchase agreement and the issuing institution. Any material change in any of the material representations set forth in the offering document shall be reflected in a revised offering document that shall be provided to purchasers before any renewal or automatic renewal of a repurchase agreement may be effected. An institution that has a net-worth deficiency under paragraph (b)(7) of this section shall be subject to the requirements of Part 563g of this Subchapter, except that the following financial statements may be substituted for those required to be included in an offering circular required under Part 563g:

(i) The institution's audited statements of condition and operations for its last fiscal year prepared in accordance with the requirements of § 563c.1 of this Subchapter;

(ii) On a comparative basis, the institution's latest unaudited statement of condition for the quarter ending within 135 days of any sale, renewal, or automatic renewal of a repurchase agreement, and an unaudited statement of operations for the period then ended, prepared in accordance with the requirements of § 563c.1; and

(iii) The institution's latest monthly financial report filed with the Corporation.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

Subpart A—Form and Content of Financial Statements in Offering Circulars

6. The statutory authority for Part 563c continues to read as follows:

Authority: Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726 and 1730); sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12, 13, 14, 16, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, 896, and 901, as amended (15 U.S.C. 78 c(b), m, n, p, and w); and Reorg. Plan No. 3 of 1947, 12 Fr 4981, 3 CFR, 1943-48 Comp., p. 1071, unless otherwise noted.

7. Amend § 563c.1 by revising paragraph (a)(2), as follows:

§ 563c.1 Application of this subpart.

(a) * * *

(2) any offering circular or non-public offering materials required to be used in connection with an offer or sale of securities under Part 563g of this Subchapter.

* * * * *

8. Add a new part 563g, as follows:

PART 563g—SECURITIES OFFERINGS

Sec.
563g.1 Definitions.
563g.2 Offering circular requirements.
563g.3 Exemptions.
563g.4 Non-public offerings.
563g.5 Filing and signature requirements.
563g.6 Effective date.
563g.7 Form, content, and accounting.
563g.8 Use of the offering circular.
563g.9 Escrow requirement.
563g.10 Unsafe or unsound practices.
563g.11 Withdrawal or abandonment.
563g.12 Securities sale report.
563g.13 Public disclosure and confidential treatment.
563g.14 Waiver.
563g.15 Requests for interpretive advice or waiver.
563g.16 Delayed or continuous offering and sale of securities.
563g.17 Direct sales of securities at an office.
563g.18 Current and periodic reports.
563g.19 Approval of the security.
563g.20 Form for securities sale report.
563g.21 Filing of copies of offering circulars in certain exempt offerings.
563g.22 Delegation of authority.

Authority: Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726 and 1730; sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, 16, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, 896, and 901, as amended, 15 U.S.C. 78c(b), 78 l, m, n, p, and w; the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 563g.1 Definitions.

(a) For purposes of this Part, the following definitions apply:

(1) "Accredited investor" means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any insured institution.

(2) "Beneficial owner" means the same as in Commission Rule 13d-3 (17 CFR 240.13d-3) under the Exchange Act.

(3) "Business combination" means the same as in Commission Rule 501(d) (12 CFR 230.501(d)) under the Securities Act.

(4) "Commission" means the Securities and Exchange Commission.

(5) "Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj).

(6) "Filing date" means the date on which any documents are actually received during business hours, 9:00 a.m. to 5:00 p.m. Eastern Standard Time, by the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. However, if the last date on which documents can be accepted falls on a Saturday, Sunday, or holiday, such documents may be filed on the first business day following such Saturday, Sunday or holiday.

(7) "Insured institution" means the same as in § 561.1 of this Subchapter, and includes a federally-chartered insured institution in organization under this Chapter, and a state-chartered institution in organization which is granted conditional approval of insurance of accounts by the Corporation. In addition, for purposes of this Part, "insured institution" includes any underwriter participating in the distribution of securities of an insured institution.

(8) "Issuer" means an insured institution which issues or proposes to issue any security.

(9) "Offer;" "Sale" or "sell." For purposes of this Part 563g, the term "offer," "offer to sell," or "offer for sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. "Sale" and "sell" includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(10) "Person" means the same as in § 563b.2(a)(24) of this Subchapter, and includes an insured institution.

(11) "Purchase" and "buy" means the same as in § 563b.2(a)(26) of this Subchapter.

(12) "Securities Act" means the Securities Act of 1933 (15 U.S.C. 77a–77aa).

(13) "Security" means the same as in § 561.41 of this Subchapter.

(14) "Underwriter" means the same as in § 563b.2(a)(36) of this Subchapter.

(b) A term not defined in this Part but defined in another part of this Subchapter, when used in this Part, shall have the meanings given in such other part, unless the context otherwise requires.

(c) When used in any rules, regulations, or forms of the Commission referred to in this Part, the term "Commission" shall be deemed to refer to the Corporation or the Board, the term "registrant" shall be deemed to refer to an issuer defined in this Part, and the term "registration statement" or "prospectus" shall be deemed to refer to an offering circular filed under this Part, unless the context otherwise requires.

§ 563g.2 Offering circular requirements.

(a) *General.* No insured institution shall offer or sell, directly or indirectly, any security issue by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this Part and which has been filed and declared effective pursuant to this Part; or

(2) An exemption is available under this Part.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this Part:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act; and

(2) Subsequent to filing an offering circular, any notice, circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act.

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the Corporation.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this Part;

(2) The preliminary offering circular includes the information required by this Part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the Corporation is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

§ 563g.3 Exemptions.

The offering-circular requirements of § 563g.2 of this Part shall not apply to an issuer's offer or sale of securities:

(a) Made prior to March 1, 1986: *Provided,* that (1) the offer or sale does not continue for more than 60 days after March 1, 1986, and (2) the issuer is not a *de novo* federally-chartered institution in organization;

(b) Complying with the requirements for retail repurchase agreements of § 563.8–4 of this Subchapter, except where the issuer has a net-worth deficiency under that section;

(c) Exempt from registration under either sections 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated savings and loan associations), and 3(a)(11) (for intrastate offerings) of the Securities Act;

(d) In a conversion from the mutual to the stock form of organization pursuant to Part 563b of this Subchapter, except for a supervisory conversion undertaken pursuant to Subpart C of Part 563b of this Subchapter;

(e) In a non-public offering which satisfies the requirements of § 563g.4 of this Part;

(f) That are debt securities issued in denominations of $100,000 or more, which are fully collateralized by any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property; or

(g) Distributed exclusively aboard to foreign nationals: *Provided,* that (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not

be required if the securities were not exempt under the Securities Act.

(h) To its employees or directors pursuant to any qualified pension, profit-sharing, or stock bonus plan meeting the requirements of section 401(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 401(a)).

§ 563g.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of Section 4(2) of the Securities Act and §§ 563g.3(c) and 563g.3(e) of this Part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this section are satisfied.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (7 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any officer, director or affiliate of the issuer. For purposes of this paragraph (b), a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer shall file with the Corporation a report describing the results of the sale of securities as required by § 563g.12(b) of this Part.

(d) *Limitation on resale.* Except as provided for in paragraph (d)(3) of this section, securities acquired in a transaction under this exemption shall not be resold or otherwise disposed of for a period of two years from the date of the initial sale without the prior written consent of the Corporation.

(1) The issuer shall exercise reasonable care to ensure that the purchasers of the securities are not purchasing for resale or distribution, which reasonable care shall include, but not be limited to, the following:

(i) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(ii) Written disclosure to each purchaser prior to sale that the securities cannot be resold or otherwise disposed for a period of two years without the prior written consent of the Corporation except as to transfers provided for in paragraph (d)(3) of this section; and

(iii) Placement of an appropriate legend on the certificate or other document that evidences the restricted nature of the securities.

(2) When the securities are lawfully transferred without the consent of the Corporation pursuant to paragraph (d)(3) of this section, or transferred with the consent of the Corporation, then the holding periods may run consecutively from the date of sale in connection with the initial transaction exempt under this § 563g.4.

(3) Prior written consent of the Corporation shall not be required under this paragraph for a transfer:

(i) To the issuer;

(ii) Pursuant to an order or process of any court;

(iii) To an "accredited investor;"

(iv) To the transferor's ancestors, descendants or spouse, or any custodian or trustee for the account of the transferor or the transferor's ancestors, descendants or spouse; or to a transferee by a trustee or custodian for the account of the transferee or the transferee's ancestors, descendants or spouse;

(v) By way of gift or donation *inter vivos* or on death;

(vi) By a trustee to a successor trustee when such transfer does not involve a change in the beneficial ownership of the securities;

(vii) In a transaction which would have been exempt from the offering circular requirements of § 563g.2, by operation of § 563g.3 or § 563g.4 of this Part, if the transfer was made by an insured institution.

§ 563g.5 Filing and signature requirements.

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this Part shall, unless otherwise indicated, be filed in accordance with the requirements of § 563b.8(e)(1), (3) and (4), (f) through (q), and (s), of this Subchapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this Part shall include 10 copies of the document to be filed with the Corporation, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Corporate and Securities Division, Office of General Counsel; and

(ii) Three copies, which shall include one manually signed copy with exhibits and two conformed copies without exhibits, to the Principal Supervisory Agent.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, 25 copies of the offering circular used shall be filed with the Corporation, as follows: 22 copies to the Corporate and Securities Division, Office of General Counsel, and three copies to the Principal Supervisory Agent.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the Corporation in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the Corporation pursuant to this Part shall

include and attached manually signed signature page which authorizes the filing and has been signed by:

(i) The issuer, by its duly authorized representative;

(ii) The issuer's principal executive officer;

(iii) The issuer's principal financial officer;

(iv) The issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this Part shall be signed by a person authorized to do so.

(3) At least two copies of every document filed pursuant to this Part shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State the capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.

§ 563g.6 Effective date.

An offering circular filed by an insured institution shall be deemed to be automatically declared effective by the Corporation on the twentieth day after filing or on such earlier date as the Corporation may determine for good cause shown: *Provided*, that:

(a) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed;

(b) The period until automatic effectiveness under this section shall be stated at the bottom of the facing page of the Form OC or any amendment;

(c) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effectiveness date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this section; and

(d) If it appears to the Corporation at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the Federal Home Loan Bank Board, as the operational head of the Corporation, may pursue any remedy it is authorized to pursue under Section 407 of the National Housing Act of 1934, as amended, (12 U.S.C. 1730) including, but not limited to, institution of cease-and-desist proceedings.

§ 563g.7 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this Part shall:

(1) Be filed under cover of Form OC, which is under Part 563b of this Subchapter;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR Part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S-1 (17 CFR Part 239) for registration under the Securities Act, if the institution issuing the securities is not in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S-K (17 CFR Part 229) should be furnished, include the information as modified by any corresponding item in Form PS, which is under Part 563b of this Subchapter, and all of the information required by Item 7 of such Form PS;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in Part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or § 563g.18 of this part, include in Part II of Form OC the following undertaking: "The issuer hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this Part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed."

(8) In offerings involving the issuance of warrants, subscription rights or conversion rights within the meaning of § 563g.1(9), include in Part II of Form OC an undertaking to provide a copy of the issuer's most recent audited financial statements to persons exercising such warrants or rights prior to or simultaneously with the exercise thereof.

(9) Include as supplemental information and not as part of the Form OC and only with respect to *de novo* offerings, a copy of the application for permission to organize for federally-chartered institutions, and a copy of the application for insurance of accounts for state-chartered institutions; and

(10) In addition to the information expressly required to be included by this section, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Accounting requirements.* To be declared effective, an offering circular or amendment shall satisfy the accounting requirements in Subpart A of Part 563c of this Subchapter and, to the extent they are not inconsistent, the accounting rules in the Commission's Regulations S-X (17 CFR Part 210) and the financial information requirements in the Commission's Regulation S-K (17 CFR Part 229).

§ 563g.8 Use of the offering circular.

(a) An offering circular or amendment declared effective by the Corporation shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 563g.5(b)(3) of this Part shall not extend the period for which an effective offering circular or amendment may be used under paragraphs (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this part, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the Corporation.

§ 563g.9 Escrow requirement.

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum-maximum amount to be sold shall be held in an escrow or similar separate account until such time as all

of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all funds in the escrow account shall be promptly refunded unless the Corporation otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

§ 563g.10 Unsafe or unsound practices.

It shall constitute an unsafe or unsound practice within the meaning of section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) and section 407(e) of the National Housing Act of 1934 (12 U.S.C. 1730(e)) for any person, directly or indirectly,

(a) To employ any device, scheme or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates as a fraud or deceit upon any person,

in connection with the purchase or sale of any security of an insured institution. Nothing in this § 563g.10 shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) or Rule 10b-5 promulgated thereunder (17 CFR 240.10b-5).

§ 563g.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any documents withdrawn will not be removed from the files of the Corporation, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the Corporation for a period of nine months and has not become effective the Corporation may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this Part or be withdrawn within 30 days after the date of such notice. Where a filing is abandoned, the documents will not be removed from the files of the Corporation, but will be marked "Declared abandoned by the FSLIC on (date)."

§ 563g.12 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after the first sale of securities and not later than 30 days after the last sale of securities in an offering pursuant to § 563g.2 of this Part, the issuer shall file with the Corporation a report describing the results of the sale of the securities, which shall include all of the information required by Form G-12 set forth at § 563g.20 of this Part and shall also include the following:

(1) The name, address, and docket number of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and

(5) The number of purchases of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.

(b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in a offering pursuant to § 563g.4 of this Part, the issuer shall file with the Corporation a report describing the results of the sale of securities, which shall include all of the information required by Form G-12 set forth at § 563g.20 of this Part, and shall also include the following:

(1) All of the information required by paragraph (a) of this section;

(2) A detailed statement of the factual and legal grounds for the exemption claimed; and

§ 563g.13 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this Part will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Parts 505 and 505a of this Chapter.

(b) Any requests for confidential treatment of information in a document required to be filed under this Part shall be made as required under Commission Rule 24b-2 (17 CFR 240.24b-2) under the Exchange Act.

§ 563g.14 Waiver.

(a) The Corporation may waive any requirements of this Part, or any required information:

(1) Determined to be unnecessary by the Corporation;

(2) In connection with a transaction approved by the Corporation for supervisory reasons, or

(3) Where a provision of this Part conflicts with a requirement of applicable state law.

(b) Any condition, stipulation or provision binding any person acquiring a security issued by an insured institution which seeks to waive compliance with any provision of this Part shall be void, unless approved by the Corporation.

§ 563g.15 Requests for interpretive advice or waiver.

Any requests to the Corporation for interpretive advice or a waiver with respect to any provision of this Part shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed with the Office of General Counsel, Corporate and Securities Division;

(b) The provisions of this Part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 563g.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under § 563g.2 of this Part may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made.

§ 563g.17 Direct sales of securities at an office.

Securities of an insured institution or an affiliate shall only be offered or sold at an office of an insured institution or an affiliate, if:

(a) No commissions are paid to any employee or other person;

(b) No offers or sales are made by tellers or at the teller counter, or by

comparable persons at comparable locations;

(c) Offers and sales are made only by regular, full-time employees;

(d) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made, except that such compliance is not required for repurchase agreements issued in compliance with § 563.8-4 of this Subchapter.

§ 563g.18 Current and periodic reports.

(a) Each insured institution which files an offering circular which becomes effective pursuant to this part, after such effective date, shall file with the Corporation periodic and current reports on Forms 8-K, 10-Q and 10-K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular were securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file periodic and current reports under this section shall be automatically suspended if and so long as any issue of securities of the insured institution is registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file under this section shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons.

(b) For purposes of registering securities under sections 12(b) or 12(g) of the Exchange Act, as issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Forms 8-A or 8-B as applicable.

§ 563g.19 Approval of the security.

Any securities of an insured institution which are not exempt under this Part and are offered or sold pursuant to an offering circular which becomes effective under this Part, are deemed to be approved as to form and terms for purposes of § 563.1 of this Subchapter.

§ 563g.20 Form for securities sale report.

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552

Form G-12—Securities Sale Report Pursuant to Rule 563g.12

FHLBB No. ———
Issuer's Name: ———
Address: ———

If in organization, state the date of certification of insurance of accounts:

———

State the title, number, aggregate and per-unit offering price of the securities sold:

———

State the aggregate and per-unit dollar amounts of actual itemized offering expenses, discounts, commissions, and other fees:

———

State the aggregate and per-unit dollar amounts of the net proceeds raised:

———

Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used: ———
State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering: ———
For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary): ———
For a non-public offering, all offering materials used should be listed: ———
Person to Contact: ———
Telephone No.: ———

The issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report: ———
Issuer: ———
Signature: ———
Name: ———
Title: ———

Instruction: Print the name and title of the signing representative under his signatures. Ten copies of the securities sale report should be filed, including two copies manually signed, as required under 12 CFR 563g.5.

Attention: ———

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and 12 CFR 563.18(b)).

§ 563g.21 Filing of copies of offering circulars in certain exempt offerings.

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirements of § 563g.2 by reason of §§ 563g.3(f) or 563g.4 of this Part shall be mailed to the Corporation within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the Corporation and shall not be deemed to be "filed" with the Corporation pursuant to § 563g.2 of this Part. The mailing to the Corporation of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 563g.2 of this Part.

§ 563g.22 Delegation of authority.

The General Counsel, Deputy General Counsel, Associate General Counsel for Corporate and Securities or their designee, is authorized to act on or exercise the Corporation's authority pursuant to this Part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-30731 Filed 12-30-85 8:45 am]

BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance and Voluntary Termination of Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA has received Office of Management and Budget (OMB) approval of its information collection requirements in its regulation providing for capitalization of the National Credit Union Share Insurance Fund through the maintenance of a deposit by each insured credit union. This document confirms the control numbers and expiration dates assigned by OMB for the information collection requirements.

EFFECTIVE DATE: December 31, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Wilmer A. Theard, Program Officer, Telephone (202) 357-1142 and (202) 357-1065, respectively.

SUPPLEMENTARY INFORMATION: On Wednesday, October 17, 1984, the final rule entitled "Capitalization of the National Credit Union Share Insurance Fund" was published in the **Federal Register** (49 FR 40561) (12 CFR 741 and 746). A statement regarding OMB clearance of information collection requirements in the final rule was inadvertently omitted. On Thursday, October 25, 1984 (49 FR 429181) a statement regarding submission of the final rule to OMB was published. OMB approval of the information collection requirements found in Section 741.5(f) was obtained on December 13, 1985. The approval is valid through December 31, 1987. The OMB control number assigned to the information collection requirements is 3133-0073. OMB approval of the information collection requirements found in 741.7(a) was obtained on December 16, 1985. The

approval is valid through December 31, 1987. The OMB control number assigned to the information collection requirements is 3133-0004. Section 795.1 of the NCUA Regulations (12 CFR 795.1) lists current OMB control numbers. The control numbers for Part 741 are already listed as the control numbers for the regulation prior to its October 1984 revision. Therefore, Section 795.1 need not be amended.

Dated: December 23, 1985.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 85-30572 Filed 12-30-85; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 748

Report of Crime or Catastrophic Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule revises Part 748 of the NCUA Rules and Regulations. The revised rule provides a new criminal referral form, NCUA Form 2362, for use by federally insured credit unions in reporting suspected criminal activity to the NCUA Regional Directors, the U.S. Attorney, and the Federal Bureau of Investigation.

EFFECTIVE DATE: December 31, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Wilmer A. Theard. Telephone Number (202) 357-1065.

SUPPLEMENTARY INFORMATION:

Background

The Bank Fraud Working Group (Group) was formed in 1984 for the purpose of bringing together the various federal financial institutions' regulatory and law enforcement agencies to meet and recommend improvements in the federal bank fraud enforcement effort. The Group is comprised of representatives from NCUA, the Federal Reserve Board, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Federal Bureau of Investigation, and the Department of Justice.

Among other things the Group drafted suggestions on procedures and forms with respect to criminal referrals. The Group endorsed the preparation of a uniform referral form to be used by the signatory financial supervisory agencies and by their regulated financial institutions when referring suspected criminal activities to the Department of Justice, the various U.S. Attorneys, and the Federal Bureau of Investigation. The NCUA Form 2362, Criminal Referral Form, reflects that agreement.

The NCUA published the proposed rule in the **Federal Register** issue of September 13, 1985 (50 FR 37380).

Scope of Rule Change

The previous rule required all federally insured credit unions to report criminal and catastrophic acts. The major change reflected in the revised rule is that it sets forth a specific form, NCUA Form 2362 for use in referring crimes. The form is to be completed and filed with the NCUA Regional Director, the local U.S. Attorney and the Federal Bureau of Investigation in the case of any crime or suspected crime, with limited exceptions discussed below. The form contains the minimal essential information needed by the Department of Justice to meet its commitment to regularly investigate and prevent crime in our nation's financial institutions. The content of the NCUA form closely follows the format and questions of the form drafted by the Working Group. However, terms common to credit union operations have been used whenever possible.

The reporting requirements for crimes and the new NCUA form are set forth in a new § 748.1(c) of the regulation. Section 748.1(b) which previously dealt with both crimes and catastrophic acts, has been revised to address only catastrophic acts. Also, § 748.1(b) has been clarified by adding a definition of "catastrophic act."

Other Comments

The NCUA Board received four comments on the Criminal Referral Form and its implementing Regulation. Two comments were from Federal credit unions and two were from trade associations. Generally, each of the commenters expressed concern regarding two areas:

1. A need to provide definitions for many of the terms used in the form.
2. Potential civil liability for FCUs who, in good faith, may submit referrals on innocent persons.

In response to the first concern, the Working Group has taken the issue of definitions of key terms under consideration and supplementary guidance may be provided at a later date.

With respect to potential civil liability for defamation, NCUA does not agree that Federal credit unions will be exposed to civil liability for making good faith reports. Federal credit unions have a common law duty to report and will have a statutory duty to report crimes and suspected criminal activity upon adoption of this amendment.

One commenter suggested that we include a reference to the confidentiality of the report. NCUA believes that a statement regarding the confidentiality of the report would be helpful and has included such a statement on the final draft of the form.

Two other revisions have been made to the form. First, consistent with a recommendation of the Working Group a minimum dollar amount ($2,500) has been added, which must be exceeded before an institution is required to submit the report in cases where the name of the suspect is unknown. Reports must be made in all cases, however, where the name of the suspect is known. This change was made to avoid burdening institutions with filing reports for numerous small crimes or disappearances such as credit card fraud, ATM fraud, check kiting etc., where the name of the suspect is unknown.

Second, NCUA has decided to combine the long and short form into one form. In those situation where a short form would normally be used, the preparer will simply complete the first two pages of the form and discard the remaining pages. This change was implemented to further simplify the form and its use.

Some commenters suggested that NCUA provide guidelines in Section 748 for developing a written security program. In response to those comments it is noted that the NCUA Accounting Manual for Federal Credit Unions, Section 5193, Security Devices and Procedures, provides criteria for developing a security program.

Regulatory Procedures

The NCUA Board hereby certifies that this rule will not have a significant economic impact on credit unions. As indicated by the Federal Bureau of Investigation's 1984 statistics, only 172 violations were reported and investigated in federally insured credit unions.

Paperwork Reduction Act

The information collection requirements contained in this rule (NCUA Form 2362) have been submitted to and cleared by the Office of Management and Budget (OMB). The collection is approved for use through July 31, 1988, unless continued, and is assigned the OMB Number 3133-0094.

List of Subjects in 12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Report of Crime or Catastrophic Act, Security measures.

By the National Credit Union Administration on the 12th day of December 1985.

Rosemary Brady,

Secretary of the NCUA Board.

Part 748 is revised to read as follows:

PART 748—REPORT OF CRIME OR CATASTROPHIC ACT

Sec.

748.0 Security program.

748.1 Filing of reports.

Authority: 12 U.S.C. 1766(a).

§ 748.0 Security Program.

(a) Each federally insured credit union will develop a written security program within 90 days of the effective date of insurance.

(b) The security program will be designed to protect each credit union office from robberies, burglaries, and larcenies; to prevent destruction of vital records as defined in the *Accounting Manual for Federal Credit Unions;* and to assist in the identification of persons who commit or attempt such crimes.

§ 748.1 Filing of reports.

(a) *Compliance Report.* Each federally insured credit union shall file with the regional director an annual statement certifying its compliance with the requirements of this Part. The statement shall be dated and signed by the president or other managing officer of the credit union. The statement is contained on the Report of Officials which is submitted annually by federally insured credit unions after the election of officials. In the case of federally insured state-chartered credit unions, this statement can be mailed to the regional director via the state supervisory authority, if desired. In any event, a copy of the statement shall always be sent to the appropriate state supervisory authority.

(b) *Catastrophic Act Report.* Each federally insured credit union will notify the regional director within 5 business days of any catastrophic act that occurs at its office(s). A catastrophic act is any natural disaster such as a flood, tornado, earthquake, etc., or major fire or other disaster resulting in some physical destruction or damage to the credit union. Within a reasonable time after a catastrophic act occurs, the credit union shall ensure that a record of the incident is prepared and filed at its main office. In the preparation of such record, the credit union should include information sufficient to indicate the office where the catastrophic act occurred; when it took place; the amount of the loss, if any; whether any operational or mechanical deficiency(ies) might have contributed to the catastrophic act; and what has been done or is planned to be done to correct the deficiency(ies).

(c) *Criminal Referral Form.* Each federally insured credit union will notify the NCUA regional director, the U.S. Attorney, and the Federal Bureau of Investigation within 7 business days of any crime or suspected crime that occurs at its office(s), utilizing NCUA form 2362, Criminal Referral Form. Copies of this form have been distributed to all federally insured credit unions. Additional copies may be obtained by contacting the appropriate NCUA Regional Office.

BILLING CODE 7535-01-M

Control No (Agency use only)

OMB No. 3133-0094

CRIMINAL REFERRAL FORM

Attention: This form should be filed by the reporting credit union not later than 7 business days following the discovery of the suspected violation. Additional information not readily available at the time of filing should be submitted on an amended form

One copy of the completed form should be filed with each of the following: (1) the local U.S. Attorney, (2) the local FBI office, and (3) the National Credit Union Administration (NCUA) Regional Office where the credit union is located

Complete only pages one and two if suspected criminal activity involves actual or probable loss of less than $10,000 (before any recovery of reimbursement) not involving an elected or appointed official within the meaning of 12 U.S.C. Section 1761 or an employee of the credit union. Criminal activity involving less than $2,500 per transaction need not be reported *unless* the name of the suspect is known or it is reasonably believed that the suspect can be identified. In all cases, regardless of amount, a report should be submitted if the name of the suspect is known.

Complete all items on this form where suspected criminal activity involves actual or probable loss (before reimbursement or recovery) of $10,000 or greater and in all cases, regardless of the amount, involving an elected or appointed official as defined by Section 111 of the Federal Credit Union Act (12 U.S.C. Section 1761) or an employee of the credit union. For purposes of this form, "suspected criminal activity" is anything for which there is a factual basis for believing that a crime has occurred.

The NCUA Board considers this report confidential pursuant to applicable provisions of the Privacy Act, 5 U.S.C. Section 552a, and the Freedom of Information Act, 5 U.S.C. Section 552. Accordingly, the report and the information that it contains may be shared with appropriate law enforcement agencies consistent with applicable laws and regulations. In addition, persons identified in the report may in some circumstances be entitled to access to the report under provisions of the Privacy Act. **In no case should information in this report be disclosed by a credit union official or employee to any source (except a law enforcement agency) or person not specifically designated for distribution on this form.**

See Detailed Instructions on Page 6

1. **Name, location, and charter or insurance certificate number of credit union.**

   Name _____

   Location _____
   Street City State Zip

   Charter/insurance certificate number _____

   If activity occurred at branch office(s), please identify _____

   _____

2. **Asset size of credit union** (millions of dollars) _____

3. **Approximate date and dollar amount (prior to any allowance for restitution or recovery) of suspected violation.**

   Date _____ Amount (thousands of dollars) $ _____
   Month Day Year

4. **Summary characterization of the suspected violation** Check **appropriate box(es)**

   ☐ Defalcation/Embezzlement
   ☐ False Statement
   ☐ Check Kiting
   ☐ Other (Describe) _____
   ☐ Bribery/Gratuity
   ☐ Misuse of Position or Self-Dealing
   ☐ Mysterious Disappearance _____

   Applicable Section(s) of Title 18, U.S. Code (if known) (See list on page 7.) _____

5. **This matter is being referred to the FBI in** _____
   City State

   and the U.S. Attorney in _____ _____
   City State Judicial District (if known)

NCUA 2362

Name of Financial Institution _____

6. **Person(s) Suspected of Criminal Violation** (if more than one, use continuation sheet)

a Name _____ (First) _____ (MI) _____ (Last)

Address _____ (Street) _____ (City) _____ (State) _____ (Zip Code)

Date of Birth _____ (Month Day Year) Social Security No (if known) _____

b Relationship to the financial institution (check all applicable blocks)

☐ Officer ☐ Employee ☐ Broker ☐ Shareholder
☐ Director ☐ Agent ☐ Borrower ☐ Other (specify) _____

c Is person still affiliated with the financial institution ☐ Yes ☐ No

If no, ☐ terminated ☐ resigned Date _____ (Month Day Year)

Describe Circumstances of Separation (if necessary, use continuation sheet) _____

d. Prior or related referrals ☐ Yes ☐ No If yes, please identify briefly by name and date.

e. Is person affiliated with any other financial institution ☐ Yes ☐ No
or business enterprise. ☐ Yes ☐ No If yes to either or both, please identify.

7 **Explanation/Description of Suspected Violation.** (Give a brief summary of the suspected violation, explaining what is unusual or irregular about the transaction.) (if necessary, use continuation sheet)

8. **Has there been a confession?** ☐ Yes ☐ No If so, by whom? _____

9. **Offer of Assistance.** The individuals listed below are/will be authorized to discuss this referral with FBI and Department of Justice officials and to assist in locating or explaining any documents pertinent to this referral, provided that contact is first made with

Name _____ Position _____

Telephone _____

Name _____ Telephone _____

Name _____ Telephone _____

Name _____ Telephone _____

_____
Name of Financial Institution

Page 3 of

10. **Form Prepared by** _____

Position _____

Agency/Institution _____

Telephone _____ Date _____

Complete the remaining questions if suspected criminal activity involves probable loss (before reimbursement or recovery) of $10,000 or greater and in all cases, regardless of amount, involving an elected or appointed official within the meaning of 12 U.S.C. Section 1761 or an employee of the credit union.

11 **Give a Chronological and Complete Account of the Suspected Violation.** (If necessary, use continuation sheet)

- Relate key events to documents and attach copies of those documents
- Explain who benefited, financially or otherwise, from the transaction, how much, and how.
- Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.
- Furnish any explanation of the transaction provided by any other person.
- Indicate where the suspected violation took place (e.g., main office, branch, other).
- Recommend any further investigation that might assist law enforcement authorities in fully examining the potential violation.

12. **Indicate Whether the Suspected Violation Appears to Be an Isolated Incident or Whether It Relates to Other Transactions.** (Explain)

Name of Financial Institution _____

13. **Exclusion of Information from the Referral.** Has any pertinent information been excluded from this referral as a result of any legal or other restraint? ☐ Yes ☐ No

If so, why? _____

Have the excluded information or documents been segregated for later retrieval? ☐ Yes ☐ No

14. **Witnesses.** List any witness who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed (if necessary, use continuation sheet)

	Name	*Position*	*Address*	*Telephone*	*Interviewed* Yes	No
1.					☐	☐
2.					☐	☐
3.					☐	☐
4.					☐	☐
5.					☐	☐

15. **Discovery and Reporting**

a. Who discovered the suspected violation and when?

b. Has the suspected violation been reported to the Board of Directors? ☐ Yes ☐ No By whom and when?

c. Has the Board of Directors taken action? ☐ Yes ☐ No If so, what and when?

d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency? ☐ Yes ☐ No If so, by whom, to whom, and when?

16. **Loss**

a. Amount of loss known $ _____

b. Restitution by _____

In the amount of $ _____

c. Name of Applicable Surety Bond Company _____

d. Amount of Bond $ _____

e. Amount of deductible $ _____

f. Was claim filed? ☐ Yes ☐ No _____

g. Settlement by Surety company to date $ _____

h. Total restitution and settlement to date $ _____

i. Net loss (after subtracting any amounts paid in the form of restitution of settlement) $ _____

j. Is additional loss suspected? ☐ Yes ☐ No (If yes, explain)

k. Has the suspected violation had a material impact on or otherwise affected the financial soundness of the institution? ☐ Yes ☐ No (If yes, explain)

Name of Financial Institution

Continuation Sheet

Item No.	Remarks

BILLING CODE 7535-01-C

Principal Criminal Statutes

18 U.S.C. 2—"To aid, abet, counsel, command, induce or procure" the commission of federal offense.

18 U.S.C. 201—Bribery of "public officers," including elected representatives, jurors and employees of any department or agency of the federal government, and witnesses in official proceedings, e.g., anyone who gives, offers or promises anything of value to a public official or a witness with the intent to influence that person's official functions.

18 U.S.C. 215—Kickbacks, bribes. Makes it unlawful for any officer, director, employee, agent or attorney to solicit, accept or give anything of value in connection with any transaction or business of any financial institution.

18 U.S.C. 371—Conspiracy of two or more persons to either commit a federal offense or to defraud the United States (or any agency of the U.S.).

18 U.S.C. 657—Theft, embezzlement or misapplication of credit union funds, willfully, by an officer, director, agent or employee of a credit union with intent to injure or defraud the credit union. Can infer intent to injure from the fact of injury or from acts knowingly done in reckless disregard for the interests of the credit union.

18 U.S.C. 1001—General false statements statute—knowingly and willfully falsifying or concealing a material fact or making a false statement or making or using false writing knowing it to be false.

18 U.S.C. 1006—False entries and reports or statements, including material omissions, with intent to injure or defraud the credit union, the National Credit Union Administration, NCUA examiners or other individuals or companies.

18 U.S.C. 1014—False statement (oral or written), e.g., loan application, made knowingly for the purpose of influencing any credit union whose deposits are insured by NCUA, upon any application, purchase agreement, commitment, loan (or any change or extension of same) including willfully overvaluing land, property or security.

18 U.S.C. 1029—Credit Card Fraud; knowingly and with intent to defraud, produce, use or traffic in counterfeit access devices.

18 U.S.C. 1030—Computer Fraud; knowingly accessing a computer without authorization, or using it for unauthorized purposes, including obtaining information contained in records of financial institutions.

18 U.S.C. 1341—Mail Fraud—scheme or artifice to defraud that makes use of the Postal Service.

18 U.S.C. 1343—Wire Fraud—scheme or artifice to defraud using transmission by wire, radio or television for the purpose of carrying out the scheme.

18 U.S.C. 1344—Bank Fraud; scheme or artifice to defraud a federally insured institution or take money funds, credits, assets, securities or other property by misrepresentation.

18 U.S.C. 1621—Perjury/false statement made under oath (if false statement is made under oath, individual may still be prosecuted under 18 U.S.C. 1001 or 1014).

18 U.S.C. 1951, 18 U.S.C. 1961, et seq.—Racketeer Influenced and Corrupt Organization ("RICO") statutes. Investing in any enterprise affecting commerce if the funds for the investment are derived from "a pattern of racketeering activity" (these activities are defined to include: murder, drug dealing, bribery, robbery, extortion, counterfeiting, mail fraud, wire fraud, embezzlement from pension funds, obstruction of criminal investigations, fraud in the sale of securities, etc.).

18 U.S.C. 2113—Bank robbery and incidental crimes, including tking of any property in excess of $100 in value belonging to a bank, savings and loan or credit union, and receiving, possessing or disposing of same.

31 U.S.C. 5311, 31 CFR 103—Currency Transactions/Bank Secrecy Act.

NCUA Regional Offices

Region I (Boston)

Regional Director, 441 Stuart Street, 6th Floor, Boston, MA 02116, (617) 223-6807

Region II (Capital)

Regional Director, 1776 G Street, N.W., Suite 700, Washington, D.C. 20006, (202) 682-1900

Region III (Atlanta)

Regional Director, 1365 Peachtree Street, N.E., Suite 540, Atlanta, GA 30367, (404) 881-3127

Region IV (Chicago)

Regional Director, 230 South Dearborn, Suite 3346, Chicago, IL 60604, (312) 886-9697

Region V (Austin)

Regional Director, 611 East 6th Street, Suite 407, Austin, TX 78701, (512) 482-5131

Region VI (Walnut Creek)

Regional Director, 2890 North Main Street, Suite 101, Walnut Creek, CA 94596, (415) 556-6277

Instructions

Introduction: The purpose of this form is to provide a consistent means by which credit unions can make referrals of known or suspected criminal activity perpetrated against the credit unions whether by insiders or those outside the credit union. The form will provide an effective means by which appropriate law enforcement and supervisory authorities will be made aware of known or suspected criminal activity. Credit unions should use care in filling out this form and should ensure that it is filled out in as completed a manner as practicable under the circumstances.

The Following Instuctions Should Be Referred to When Filling Out the Items Referenced

Item 1. Federal credit unions use charter number. State-chartered credit unions use insurance certificate number.

Item 2. As of end of most recent calendar quarter.

Item 3. Self-explanatory.

Item 4. Enter a check mark next to those descriptions in 4(a) which most generally describe the nature of the criminal activity. Use the list of criminal statutes provided on page 6 as an aid to filling out item 4(b).

Item 5. Self-explanatory.

Item 6. Complete subparagraphs (a) through (g) on each individual suspected of criminal activity. This list should include primary suspects only. Individuals who may have knowledge of the suspected criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under item 14. Provide any additional details known with respect to prior referrals or affiliations.

Item 7. Provide a brief narrative description of the activity giving rise to the referral. For those filing the long version of this form, details will be provided later in the form. The purpose of this paragraph is to provide a summary description of the overall transaction.

Items 8 through 10. Self-explanatory.

Item 11. This section of the referral is critical. It should be as detailed as circumstances permit. The care with which this section is written may make the difference in whether or not the described conduct and its criminal nature are clearly understood. The discussion points listed in this section are not exhaustive. They should be covered, but to the extent an additional category should be addressed, it should be done here. Feel free to use attachments or to continue the description on a separate sheet. Include any suggestions for the interviewing of any witnesses, gathering of any documents or methods of investigation which might prove useful in following up on the referral (e.g., tracing of proceeds).

Items 12 through 16. Self-explanatory.

Additional Instructions for Examiners

Examiners should fill out this form whenever suspected criminal activity has been identified in a credit union and either has not yet been reported by the credit union or the referral made by the credit union is deemed to be inadequate. It is important to note that the form should be filled out whenever criminal activity is suspected; examiners are not required to make any initial finding that such referrals would, if pursued, result in a criminal conviction. That judgment will be made by responsible law enforcement authorities.

Any questions regarding whether or not any particular activity would constitute a crime for purposes of making a criminal referral should be resolved through communications with regional office.

The purpose of the referral is to provide appropriate law enforcement authorities with complete and accurate information relating to suspected criminal activity. All information requested within the body of the form should be supplied at the time of the referral unless such information is not known or can only be supplied at a later date by operation of the Right to Financial Privacy Act. In filling out this form, examiners should avoid overly

technical descriptions of transactions which might not be readily understood by law enforcement authorities unfamiliar with credit union operations.

Distribution: If made by credit union

1. Retain one copy in the credit union files.
2. Send one copy to the NCUA regional office for your credit union.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to the nearest office of the U.S. Attorney.
5. Send one copy to the nearest office of the Secret Service if credit card or ATM fraud is involved.

Distribution: If made by Examiners

1. Retain one copy in the credit union field file.
2. Send four copies to the NCUA Regional Office.
3. Send one copy to the nearest office of the Secret Service if credit card or ATM fraud is involved.

Distribution: If made by NCUA Regional Office

1. Retain one copy in regional office under name of the credit union.
2. Send one copy to Director, Office of Examination and Insurance, NCUA, Washington, DC 20456.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to U.S. Attorney. If also a criminal violation of state law, consider sending the referral to the appropriate state prosecuting authority.
5. Send one copy to the nearest office of the Secret Service if credit card or ATM fraud is involved.

Distribution: If made by State Examiners

1. Follow the instructions of your State supervisor concerning the distribution of this form.

Distribution: If made by State Supervisors

1. Follow instructions 3, 4, 5, and 6 above.

[FR Doc. 85-30571 Filed 12-30-85; 8:45 am]
BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

16 CFR Parts 0, 1, 2, 3, 4 and 5

Miscellaneous Revisions and Corrections

AGENCY: Federal Trade Commission.

ACTION: Final Rules.

SUMMARY: The Federal Trade Commission (FTC) is amending its Rules of Practice to reflect changes in law and organizational and operational changes, to make various corrections in spelling, grammar, punctuation, and style, and to make other technical corrections and revisions to conform the rules to current agency practice.

EFFECTIVE DATE: These amendments are effective December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, 202-523-3521; Marc Winerman, 202-523-3865; or Alex Tang, 202-523-3786; Attorneys, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The provisions of *PART 0—Organization* are amended to reflect the following changes in organization and operational assignments: (1) The abolishment of the Office of Policy Planning; (2) the transfer of the congressional liaison function from the Office of the General Counsel to the Office of the Chairman; (3) the transfer of the advisory opinion function from the Office of General Counsel to the Bureaus of Competition and Consumer Protection; (4) the transfer of the information and publishing function from the Deputy Executive Director for Management to the Deputy Executive Director for Planning and Information; (5) the termination of the quarterly financial reporting program within the Bureau of Economics; and (6) changes and corrections to the addresses of certain regional offices.

The provisions of *Part 1—General Procedures* are amended as follows: (1) § 1.7 is amended to clarify which rulemaking procedures are governed by the provisions of Subpart B and which are governed by the provisions of Subpart C; (2) the text of § 1.13 is amended to reinstate § 1.13(c)(3)(ii), which first appeared at 40 FR 33966, 33967 (August 13, 1975) as former § 1.13(c)(2)(ii) but was not carried forward in the recent CFR volume; (3) the heading of § 1.9 is amended to make clear that the provisions of § 1.9 apply to petitions to commence trade regulation rule proceedings rather than to the commencement of such proceedings; (4) § 1.10 is amended to make clear that advance notice of proposed rulemaking is not issued before the Commission determines whether to commence a rulemaking proceeding under § 1.9, but rather that such notice precedes the notice of proposed rulemaking issued under § 1.11; (5) § 1.18 is amended to reinstate material appearing at 45 FR 78626, 78628 (Nov. 26, 1980) that was not reproduced in the current CFR volume; and (6) the authority citation for Subpart I is corrected.

The provisions of *Part 2—Nonadjudicative Procedures* are amended as follows: (1) To reflect the abolishment of the position of Director of Federal-State and Consumer Relations and the quarterly financial reporting program mentioned above in the explanation of Part 1 amendments; (2) to eliminate the provision in § 2.12 regarding Congressional review of Commission rulemaking, in accordance with the decision in *Consumers Union of U.S., Inc.* v. *FTC*, 691 F.2d 575 (D.C. Cir. 1982), *aff'd sub nom. Process Gas Consumers Group* v. *Consumer Energy Council of America*, 463 U.S. 1216 (1983), and the expiration of the Congressional review provision of the FTC Improvements Act of 1980, *see* 15 U.S.C. § 57a-1 and note; and (3) to reflect the existing practice of placing consent agreements under § 2.32 on the public record only after they are accept by the Commission.

The provisions of *Part 3—Rules of Practice for Adjudicative Proceedings* are amended to reflect the change in the previous title of "hearing examiners" to "Administrative Law Judges". In addition, Subpart I of this part has been amended to reflect the extension and amendment of the Equal Acess to Justice Act pursuant to Pub. L. No. 99-80, 99 Stat. 183 (August 5, 1985), as follows: (1) By incorporating into § 3.81(a) the new statutory standard for determining whether an agency's position is "substantially justified"; (2) by amending § 3.81(b) to reflect the revised time period for when the Act applies; (3) by amending §§ 3.81(d)(2)(i), (ii) and (v) to reflect the revised limits on the net worth of a "party" under the Act; and (4) by removing from § 3.83(j) the former statutory restrictions on the source of funds for award payments under the Act. In addition, the parenthetical citation in § 3.81(d)(2)(iii) has been corrected.

The provisions of *Part 4—Miscellaneous Rules* are amended as follows: (1) section 4.7(e) is made consistent with § 3.55 by changing the word "rehearing" to "reconsideration"; and (2) § 4.11(b) is amended to reflect current agency practice whereby submitters of materials marked confidential or within the scope of § 4.10(a)(9) may receive notice from staff other than the General Counsel when the materials are requested by Congress.

The provisions of *Part 5—Standards of Conduct* are amended in Subpart D to reflect the creation of Associate Director positions in the Bureau of Consumer Protection and changes in the titles of various Directors responsible to the Deputy Executive Director for Management and the Deputy Executive Director for Planning and Information.

In addition, various grammatical and stylistic changes (*e.g.*, punctuation, spelling, gender references) have been made throughout Parts 0-5.

Since the amendments relate solely to rules of agency practice, they are not subject to the notice and comment

requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). For the same reason, the requirements of the Regulatory Flexibility Act do not apply. 5 U.S.C. 601(2).

List of Subjects

16 CFR Part 0

Organization and functions (government agencies).

16 CFR Part 1

Administrative practice and procedure, Advisory opinions, Rulemaking, Trade Regulation Rules.

16 CFR Part 2

Administrative practice and procedure, Claims, Equal access to justice.

16 CFR Part 3

Administrative practice and procedure, Investigations.

16 CFR Part 4

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

16 CFR Part 5

Administrative practice and procedure, Conflicts of interest.

Accordingly, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

1. The authority for Part 0 continues to read as follows:

Authority: Section 6(g); 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended (5 U.S.C. 552).

2. Section 0.8 is revised to read as follows:

§ 0.8 The Chairman.

The Chairman of the Commission is designated by the President, and, subject to the general policies of the Commission, is the executive and administrative head of the agency. He presides at meetings of and hearings before the Commission and participates with other Commissioners in all Commission decisions. Attached to the Office of the Chairman, and reporting directly to him, and through him to the Commission, are the following staff units: (a) The Office of Public Affairs, which furnishes information concerning Commission activities to news media and the public; and (b) the Office of Congressional Relations, which coordinates all liaison activities with Congress.

§ 0.9 [Amended]

3. Section 0.9 is amended by removing the words "Office of Policy Planning".

§ 0.10 [Amended]

4. Section 0.10(b) is amended by inserting the word "and" before the words "initiates and develops long-range plans" and by removing the semicolon after the words "accomplish its mission" and inserting in its place a period and removing the remainder of the sentence.

5. Section 0.10(c) is amended by removing the phrase "and coordinates the Commission's information processing systems." and inserting in its place the following:

* * * * *

* * * coordinates the Commission's information processing systems; and is responsible for the publication of all Commission actions which must appear in the **Federal Register** and for the publication of *Federal Trade Commission Decisions* and *Court Decisions—Federal Trade Commission.*

§ 0.11 [Amended]

6. Section 0.11 is amended by removing from the first sentence the words "adviser. He" and inserting in their place the words "adviser, who"; by removing the phrase "assists businessmen in obtaining advice from the Commission as to the legal propriety of proposed courses of action in particular situations under the statutes which it administers,"; and by changing the comma after "restraints" to a period and removing the remainder of the sentence.

§ 0.13 [Reserved]

7. Section 0.13 is removed and the heading is revised to read "§ 0.13 [Reserved]".

§ 0.16 [Amended]

8. Section 0.16 is amended by removing from the first sentence the words "This bureau" and inserting in their place the words "The bureau".

§ 0.18 [Amended]

9. Section 0.18 is amended by removing from the first sentence the words "This bureau" and inserting in their place the words "The bureau", and by removing the last sentence of the section.

§ 0.19 [Amended]

10. Section 0.19(b)(4) is amended by removing "Saint Clair Avenue," and inserting in its place "Saint Clair Avenue N.E.,"; § 0.19(b)(5) is amended by removing the phrase "Suite 2665, 2001 Bryan Street, Dallas, TX 75201." and inserting in its place "8303 Elmbrook Drive, Dallas, TX 75247."; and § 0.19(b)(8) is amended by removing "10007" and inserting in its place "10278".

PART 1—GENERAL PROCEDURES

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46(g), unless otherwise noted.

* * * * *

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

§ 1.7 [Amended]

12. Section 1.7 is amended by revising the last sentence to read as follows:

* * * All other rulemaking proceedings shall be governed by the rules in Subpart C, except as otherwise required by law or as otherwise specified in this chapter.

13. The heading for § 1.9 is revised to read as follows:

§ 1.9 Petitions to commence trade regulation rule proceedings.

§ 1.10 [Amended]

14. Section 1.10(a) is amended by removing the word "initiation" and inserting in its place the word "commencement".

15. Section 1.11(b)(4) is revised to read as follows:

§ 1.11 Commencement of a rulemaking proceeding.

* * * * *

(b) * * *

(4) the information required by the Regulatory Flexibility Act at 5 U.S.C. 603.

§ 1.12 [Amended]

16. Section 1.12 is amended by removing from the first sentence the words "**Federal Register**, and to" and inserting in their place the words "**Federal Register** and, to".

17. Section 1.13(c)(3)(ii) is reinstated by adding, after § 1.13(c)(3)(i), the following:

§ 1.13 Rulemaking proceeding.

* * * * *

(c) * * *

(3) * * *

(ii) *Review without certification by the presiding officer.* Within ten (10) days after publication of the final notice, any interested person may petition the Commission for addition, modification or deletion of a designated issue, accompanied by a filing not to exceed fifteen (15) pages. Additional submissions on the issue by other

interested persons, not to exceed fifteen (15) pages, may be made within twenty (20) days of the publication of the final notice. The Commission may thereupon, in its discretion, permit the appeal. Commission review, if permitted, will be based on the petition and any additional submissions, without oral argument or further briefs, unless otherwise ordered by the Commission. A petition hereunder shall not stay the rulemaking proceeding unless the presiding officer or the Commission shall so order. All petitions filed under this paragraph shall be a part of the rulemaking record. Notice of the filing of any such petition may be obtained from the Office of the Secretary of the Commission. In the event any designated issue is added or substantially modified by the Commission, interested persons shall be given a further opportunity to identify their interests with respect to those issues.

* * * * *

§ 1.13 [Amended]

18. Section 1.13(d)(1)(i) is amended by removing the comma immediately after the word "fact".

19. The heading of § 1.13(d)(2) is amended by removing the designation "*§ 1.31(d)*" and inserting in its place "*§ 1.13(d)(5)*".

20. Section 1.13(d)(5)(i)(A) is amended by removing the comma immediately after the word "specific".

21. Section 1.13(d)(5)(ii) is amended by removing the words "Such groups" and inserting in their place the words "Any such group".

§ 1.14 [Amended]

22. Section 1.14(a)(1)(iv) is amended by removing the word "State" and inserting in its place the word "state".

23. Section 1.14(a)(2)(vi) is revised to read as follows:

(a) * * *

(2) * * *

(vi) The information required by the Regulatory Flexibility Act at 5 U.S.C. 604.

* * * * *

24. Section 1.14(d) is removed.

§ 1.18 [Amended]

25. Section 1.18(a) is corrected by removing the words "verbatim transcripts of oral presentations to the Commission" and inserting in their place the words "verbatim transcripts or summaries of oral presentations to the Commission", and by removing the words "if any" and inserting in their place the words "any communications placed on the rulemaking record pursuant to § 1.18(c)".

§ 1.19 [Amended]

26. Section 1.19 is amended by removing the phrase ", as amended by Pub. L. 93-637,".

Subpart C—Rules and Rulemaking

27. The heading for Subpart C is revised to read "**Subpart C—Rules Promulgated Under Authority Other Than Section 18(a)(1)(B) of the FTC Act**".

28. Section 1.21 is revised to read as follows:

§ 1.21 Scope of the rules in this subpart.

This subpart sets forth procedures for the promulgation of rules under authority other than section 18(a)(1)(B) of the FTC Act except as otherwise required by law or otherwise specified in the rules of this chapter. This subpart does not apply to the promulgation of industry guides, general statements of policy, rules of agency organization, procedure, or practice, or rules governed by Subpart B of this part.

29. Section 1.26(c) is amended by adding to the end of the first sentence the phrase ", unless otherwise expressly required by law."

Subpart D—Administration of the Wool Products Labeling Act of 1939, Fur Products Labeling Act, and Textile Fiber Products Identification Act

§ 1.32 [Amended]

30. Section 1.32 is amended by removing from the last sentence the words "the Division of Energy and Product Information" and inserting in their place the words "the Enforcement Division of the Bureau of Consumer Protection".

Subpart I—Procedures for Implementation of the National Environmental Policy Act of 1969

31. The authority for Subpart I of this part is revised to read as follows:

Authority: 15 U.S.C. 46(g), 42 U.S.C. 4321 *et seq.*

§ 1.81 [Amended]

32. Section 1.81 is amended by removing from the heading the word "Incorporation" and inserting in its place the word "incorporation"; by removing from the first sentence the parenthetical citation "(42 U.S.C. 4371 *et seq.*)" and inserting in its place the parenthetical citation "(42 U.S.C. 4321 *et seq.*)"; by inserting in the second sentence immediately after the words "Executive Order 11514 (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)" the words ", and the Environmental Quality Improvement Act of 1980, as amended (42 U.S.C. 4371 *et seq.*)"; and by removing from the same sentence the parenthetical citation "(43 FR 55978-56007)" and inserting in its place the parenthetical citation "(40 C.F.R. 1500-1508)".

PART 2—NONADJUDICATIVE PROCEDURES

33. The authority for Part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

Subpart A—Inquiries; Investigations; Compulsory Process

§ 2.1 [Amended]

34. Section 2.1 is amended by inserting the word "and" after the words "Bureau of Consumer Protection", and by removing the phrase ", and the Director of Federal-State and Consumer Relations,".

35. Section 2.9(b)(1) is revised to read as follows:

§ 2.9 Rights of witnesses in investigations.

* * * * *

(b) * * *

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness. If the witness refuses to answer a question, then counsel may briefly state on the record if he has advised the witness not to answer the question and the legal grounds for such refusal.

* * * * *

36. Section 2.9(b)(6) is amended by removing the citation "§ 4.1(d)" and inserting in its place the citation "§ 4.1(e)".

§ 2.10 [Amended]

37. Section 2.10 is amended by removing from the final sentence the words "and depose" and inserting in their place the words "and be deposed".

§ 2.12 [Amended]

38. Section 2.12(b) is removed, and §§ 2.12 (c), (d), (e) and (f) are redesignated §§ 2.12 (b), (c), (d) and (e), respectively.

§ 2.13 [Amended]

39. Section 2.13(b)(2) is removed and §§ 2.13(b)(3), (4), and (5) are redesignated §§ 2.13(b)(2), (3), and (4), respectively.

§ 2.14 [Amended]

40. Section 2.14(c) is amended by adding the word "and" after "Bureau of Consumer Protection" and by removing

the phrase, "and the Director of Federal-State Consumer Relations,".

§ 2.16 [Amended]

41. Section 2.16(b) is amended by removing from the first sentence the words "Executive director" and inserting in their place the words "Executive Director".

Subpart C—Consent Order Procedure

§ 2.32 [Amended]

42. Section 2.32 is amended by removing from the third sentence the words "and that the Commission will place the order" and inserting in their place the words "and, if the agreement is accepted, that the Commission will place the order".

Subpart D—Reports of Compliance

43. Section 2.41(c) is amended by revising the third sentence to read:

§ 2.41 [Amended]

* * * * *

(c) * * * An order of the Commission to cease and desist becomes final on the date and under the conditions provided in the Federal Trade Commission Act and the Clayton Act. * * *

* * * * *

Subpart E—Requests to Reopen

§ 2.51 [Amended]

44. Section 2.51(a) is amended by inserting a comma after the word "final".

45. Section 2.51(b) is amended by inserting a comma after the word "part".

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

46. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

§§ 3.1—3.83 [Amended]

47. Sections 3.1 through 3.83 are amended by capitalizing the words "Administrative Law Judge", "Judges" and "Judge's" wherever the initial letters of these words appear in lower case.

Subpart B—Pleadings

48. Section 3.11(c) is revised to read as follows:

§ 3.11 Commencement of proceedings.

* * * * *

(c) *Motion for more definite statement.* Where the respondent makes a reasonable showing that it cannot frame a responsive answer based on the allegations contained in the complaint, the respondent may move for a more definite statement of the charges against it before filing an answer. Such a motion shall be filed within ten (10) days after service of the complaint and shall point out the defects complained of and the details desired.

§ 3.12 [Amended]

49. Section 3.12(a) is amended by removing the words "hearing examiner" and inserting in their place the words "Administrative Law Judge".

50. Section 3.12(c) is amended by removing the word "his" and inserting in its place the words "the respondent's".

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Decisions

§ 3.23 [Amended]

51. Section 3.23 is amended by inserting in paragraph (a)(1) the word ", that" immediately after the word "*Provided*".

52. Section 3.23(a)(3) is amended in the sentence that begins, "The application for review should specify * * *", by inserting a semicolon between the words "relies" and "and".

53. Section 3.23(b) is amended in the sentence that begins, "except as hereinbefore provided * * *", by removing the word "hereinbefore" and by inserting a comma immediately after the word "section".

54. Section 3.23(c) is amended by removing the word "examiner" and inserting in its place the word "Judge".

§ 3.24 [Amended]

55. Section 3.24(a)(1) is amended by removing from the first sentence the word "his" and inserting in its place the words "the party's".

56. Section 3.24(a)(2) is amended by removing from the third sentence the word "interrogators" and inserting in its place the word "interrogatories".

57. Section 3.24(a)(4) is amended by inserting in the first sentence a comma immediately after the word "cannot".

§ 3.25 [Amended]

58. Section 3.25(f) is amended by removing from the second sentence the comma immediately following the word "thereby"; by removing from the fourth sentence the word "for" and inserting in its place the word "For"; and by removing from the fifth sentence the words "other party" and inserting in their place the word "parties".

Subpart D—Discovery; Compulsory Process

§ 3.31 [Amended]

59. Section 3.31(b)(2) is amended by removing the word "Act" and inserting in its place the word "act".

60. Section 3.31(b)(3) is amended by removing from the first sentence the words "including his attorney" and inserting in their place the words "including the party's attorney", and by removing from the same sentence the words "preparation of his case and that he is unable" and inserting in their place the words "preparation of its case and that the party is unable".

61. Section 3.31(e) is amended by removing the heading *"Rulings on applications for compulsory process."* and inserting in its place the heading *"Rulings on applications for compulsory process."* and by removing from the first sentence the words "if so mad ," and inserting in their place the words "if so made,".

62. Section 3.32(b) is amended by revising the fourth, fifth and sixth sentences to read as follows:

§ 3.32 Admissions.

* * * * *

(b) * * * A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set fourth reasons why the party cannot admit or deny it. * * *

§ 3.37 [Amended]

63. Section 3.37(a) is amended by removing from the first sentence the word "his" and inserting in its place the words "the party's".

§ 3.38 [Amended]

64. Section 3.38(a) is amended by removing from the second sentence the word "his" and inserting in its place the word "its".

65. Section 3.38(b) is amended by removing from the first sentence the

semicolon after the word "admissions" and inserting in its place a comma.

66. Section 3.38(c) is amended by removing from the final sentence the word "subpena" and inserting in its place the word "subpoena".

§ 3.39 [Amended]

67. Section 3.39(b) is amended by removing the words "hearing examiner" and inserting in their place the words "Administrative Law Judge".

Subpart E—Hearings

§ 3.42 [Amended]

68. Section 3.42(a) is amended by removing the words "hearing examiner" and inserting in their place the words "Administrative Law Judge".

69. Section 3.42(b) is amended by removing the words "Director of Administrative Law Judges or" and inserting in their place the words "Chief Administrative Law Judge or,".

Subpart I—Recovery of Awards Under the Equal Access to Justice Act in Commission Proceedings

70. In Section 3.81 paragraphs (a) and (b) are revised to read as follows:

§ 3.81 General Provisions

(a) *Purpose of these rules.* The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to adjudicative proceedings under Part 3 of this title. An eligible party may receive an award when it prevails in the adjudicative proceeding, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record as a whole that is made in the adversary proceeding for which fees and other expenses are sought. The rules in this subpart describe the parties eligible for awards, how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When the Act applies.* The Act applies to any adjudicative proceeding pending before the Commission at any time after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date.

* * * * *

71. Section 3.81(d)(2)(i) is amended by changing "$1 million" to read "$2 million".

72. Section 3.81(d)(2)(ii) is amended by changing "$5 million" to read "$7 million".

73. Section 3.81(d)(2)(iii) is amended by removing the parenthetical citation "(25 U.S.C. 501(c)(3))" and inserting in its place the parenthetical citation "(26 U.S.C. 501(c)(3))".

74. Section 3.81(d)(2)(v) is revised as follows:

* * * * *

(d) * * *

(2) * * *

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

§ 3.83 [Amended]

75. Section 3.83(j) is amended by removing from the second sentence the words "Subject to the funding provisions of the Act, the" and inserting in their place the word "The".

PART 4—MISCELLANEOUS RULES

76. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

§§ 4.1 and 4.3 [Amended]

77. The following sections of Part 4 are amended by capitalizing the term "Administrative Law Judge": §§ 4.1(d) and 4.3(a).

§ 4.7 [Amended]

78. Section 4.7(e) is amended by removing from the first sentence the word "rehearing" and inserting in its place the word "reconsideration".

§ 4.8 [Amended]

79. Section 4.8(c)(1) is amended by removing from the second sentence the words "primarily to the public" and inserting in their place the words "primarily the public".

§ 4.11 [Amended]

80. Section 4.11(a)(2)(i)(A) is amended by removing from the first sentence the word "Appeal" and inserting in its place the word "appeal".

81. Section 4.11(a)(2)(iii)(B) is amended by changing the word "soley" throughout to read "solely".

82. Section 4.11(b) is amended by removing from the first sentence the words "subcommittees shall be referred to the General Counsel" and inserting in their place the words "subcommittees for nonpublic records shall be referred to the General Counsel"; and by removing from the second sentence the words "the General Counsel will notify the submitter" and inserting in their place the words "notice will be given to the submitter".

§ 4.14 [Amended]

83. Section 4.14(b) is amended by removing the words ", duly appointed and confirmed,".

PART 5—STANDARDS OF CONDUCT

84. The authority for Part 5 continues to read as follows:

Authority: E.O. 11222 of May 8, 1985, 30 FR 6469; 3 CFR 1965 Supp., 5 CFR 735.104.

Subpart A—General Provisions

§ 5.6 [Amended]

85. Section 5.6(b) is amended by removing from the first sentence the words "the bureau director of office head" and inserting in their place the words "the bureau director or office head".

§ 5.12 [Amended]

86. Section 5.12(f) is amended by removing the word "Comisioner" and inserting in its place the word "Commissioner".

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 5.11 [Amended]

87. Section 5.11(a)(1) is amended by removing the word "contractural" and inserting in its place the word "contractual".

§ 5.14 [Amended]

88. Section 5.14 is amended by removing from the first sentence the word "thr" and inserting in its place the word "the"; by removing from the same sentence the word "organizaion" and inserting in its place the word "organization"; and by removing from the second sentence the word "Convition" and inserting in its place the word "Conviction".

§ 5.19 [Amended]

89. Section 5.19(b) is amended by removing the word "stature" and inserting in its place the word "statute".

Subpart D—Financial Disclosures

90. Section 5.32(e)(1) is revised to read as follows:

§ 5.32 Statements of employment and financial interest under Executive Order 11222.

* * * * *

(e) * * *

(1) Assistant Directors and Associate Directors;

* * * * *

91. Section 5.32(f)(1) is revised to read:

* * * * *

(f) * * *

(1) The Director of the Division of Procurement and General Services;

* * * * *

92. Section 5.32(f)(4) is removed.

93. Section 5.32(g)(1) is revised to read:

* * * * *

(g) * * *

(1) The Director of the Division of Automated Systems;

* * * * *

94. Section 5.32(g)(3) is revised to read:

* * * * *

(g) * * *

(3) The Director of the Division of Information Services.

* * * * *

Dated: December 23, 1985.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc 85-30738 Filed 12-30-85; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF 3-71) and 7 Through 14 (FF 5-74); Technical Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Amendment of final rules.

SUMMARY: The Commission is amending two footnotes in its children's sleepwear flammability regulations because the ordering numbers for copies of referenced voluntary standards have changed.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen E. Joyce, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 30, 1975, the Consumer Product Safety Commission published final regulations on the flammability of children's sleepwear in sizes 0-6X and 7-14 (16 CFR Parts 1615 and 1616; 40 FR 59903 and 59917). These regulations contain definitions that refer to certain voluntary product standards, and two separate footnotes currently state that copies of three such standards are available from the National Technical Information Service (16 CFR 1615.1(b) and 1616.2(b)). This is still correct, as is the address of NTIS, but new ordering numbers must be used to obtain the standards. Therefore, the Commission is amending the two footnotes to provide those numbers. The Commission finds for good cause that opportunity for public comment and a delayed effective date are unnecessary because the amendment merely provides information and has no substantive impact on anyone.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Infants and children, Labeling, Reporting and recordkeeping requirements, Textiles.

PARTS 1615 AND 1616—[AMENDED]

Accordingly, the Commission amends Parts 1615 and 1616 of Title 16, Chapter II, Subchapter D as follows:

1. The authority citation for Subpart A of Parts 1615 and 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569-70; 15 U.S.C. 1193.

2. The footnote to § 1615.1(b) is revised to read:

[1] "Copies are available from the National Technical Information Service, 5285 Port Royal Street, Springfield, VA 22151, and should be ordered as CS 15150.

3. The footnote to § 161.2(b) is revised to read:

[1] "Copies are available from the National Technical Information Service, 5285 Port Royal Street, Springfield, VA 22151. The ordering number for PS 54-72 (CS 153-48), on girls' apparel sizing, is COM 73-50603; the ordering number for PS 36-70 (CS 155-50), on boys' apparel sizing, is PB 86125648.

Dated: December 24, 1985.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 85-30855 Filed 12-30-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued December 24, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of January 1986 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1986 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

[Calendar year 1986]

	Jan.											
Incremental pricing threshold	$2.460											
NGPA section 102 threshold	4.166											
NGPA section 109 threshold	2.539											
130 pct of No. 2 fuel oil in New York City threshold	7.370											

[FR Doc. 85-30917 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Extension of interim final rule.

SUMMARY: This notice extends the interim final rules published in the **Federal Register** on January 3, 1985 (50 FR 384) until February 3, 1986. These rules, which implement the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1639, were effective on December 27, 1984, and were to remain in effect (as extended 50 FR 39661) until December 31, 1985, unless extended. The Department has determined that additional time is necessary to complete the review of the interim final regulations in light of the concerns expressed in the written comments submitted to the Department.

EFFECTIVE DATE: December 27, 1985. The interim final rules will remain in effect until February 3, 1986, unless extended or superseded by another issuance.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor 20210, telephone (202) 523-7503.

Signed at Washington, DC, this 27th day of December 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-30950 Filed 12-27-85; 10:24 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 85N-0301]

Antibiotic Drugs; Ceftazidime Pentahydrate for Injection

Correction

In FR Doc. 85-28039 beginning on page 48396 in the issue of Monday, November 25, 1985, make the following corrections:

1. On page 48398, in the second column, in § 436.358(b), in the tenth line, "milliliters" should read "millimeters".

2. On page 48399, in the second column, in § 442.16a(a)(1), in the fourth line, "[[2-" should read "[[(2-".

3. On the same page, in the third column, in § 442.16a(b)(1)(i)*(b)*, in the fourth line, "milliters" should read "milliliters".

4. "(L)oss on drying" should read "loss of drying" in the following places:

a. Page 48400, second column, § 442.16a(b)(4), first line;

b. Page 48401, first column, § 442.216(a)(3)(i)(*b*), third line; and

c. Page 48401, second column, § 442.216(b)(1)(ii)(*a*), in the fourteenth line below the equation.

5. Also on page 48401, in the first column, in § 442.216(a)(3), in the second line, "complying with" should read "complying with the".

BILLING CODE 1505-01-M

DEPARTMENT OF STATE

22 CFR Parts 60 Through 65

[Departmental Regulations 108.846]

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On November 8, 1985, the Department of State published a proposed rule (50 FR 46455) to implement the fair labor provisions of Executive Order 12532 of September 9, 1985 (50 FR 36861). This final rule implements the EO's fair labor provisions, taking into account the public comments received.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paula Reed Lynch, Program Officer, (202) 331-9275; F. Allen Harris, Deputy Office Director, Office of Southern African Affairs (202) 647-8252; or Mr. Edward Cummings, (202) 647-1571, Office of the Legal Adviser, Department of State.

SUPPLEMENTARY INFORMATION: Section 2 of E.O. 12532 (50 FR 36861) deals with the labor practices of U.S. nationals and their firms in South Africa. On November 8, the Department of State

published draft implementing regulations as a proposed rule for public comment (50 FR 46455). The supplementary information portion of the proposed rule explains the background for the regulations and the basic scheme established.

Six written comments were received from the public. The Department of State has reviewed the comments and has made certain changes to the regulations as a result. (The changes are to §§ 63.1(a), 63.1(b), 63.1(d)(1), 63.1(d)(2), 63.1(d)(3), 64.1, 65.1(b), 65.1(b)(5), and 65.1(b)(6).)

The comments dealt primarily with the relation of the requirements of the voluntary Sullivan system to those of the proposed regulations. For example, it was pointed out that the evaluation method of the Sullivan system takes into account the performance of firms in relation to each other with respect to some of the principles. Questions were raised as to whether the Department would do likewise with respect to those firms that choose to report directly to the Department of State. The Department intends to make decisions on good faith compliance based on an evaluation of each report on a case-by-case basis. The Department does not intend to rate the companies in relation to each other.

Another Sullivan-related question dealt with the reporting requirements for firms that sign the Sullivan principles during 1986. A new subsection (d)(3) was added to § 63.1 to address this issue.

Section 61.1(a)(6) of the proposed rule would have prohibited the furnishing of routine authentication services related to the other penalties described in that subsection to firms that do not adhere to the principles. Upon review, and based in part on public comments, the Department has concluded that it is highly unlikely that routine authentication services would be involved in such instances. Maintaining a specific provision on this matter would give the erroneous impression that routine authentications are to be denied even in cases where there is no intercession of the kind proscribed in the EO. The Department has accordingly decided not to include a specific provision on this matter. Authentication services will be denied if the services requested constitute intercession within the meaning of § 65.1(b).

Some of the comments dealt with the basic requirements of the EO. For example, one comment recommended that firms employing less than 25 individuals in South Africa be subject to the requirements of the regulations, while another suggested that the requirement apply only to firms employing more than 50. The purpose of these regulations is to implement the EO and accordingly such comments were not accepted in preparing the final rule.

List of Subjects

22 CFR Part 60

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 61

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 62

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 63

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 64

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 65

United States investments abroad, Fair labor standards, South Africa, Exports, Penalties.

Subchapter G, consisting of Parts 60 through 65 and an Appendix, is added to Chapter I of Title 22, Code of Federal Regulations, to read as follows:

SUBCHAPTER G—SOUTH AFRICA AND FAIR LABOR STANDARDS

Part

60 Purpose and scope of application.
61 Definitions.
62 Registration.
63 General policies and reporting requirements.
64 Administrative procedures.
65 Non-adherence and penalties.
Appendix to Subchapter G—Examples of Fair Labor Practices

PART 60—PURPOSE AND SCOPE OF APPLICATION

Sec.
60.1 Purpose.
60.2 Scope of application.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sept. 9, 1985 (50 FR 36861).

§ 60.1 Purpose.

(a) *General.* Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) provides that it is the policy of the United States to encourage all United States firms in South Africa to adhere to certain fair labor standards. It provides furthermore that no department or agency of the U.S. may intercede with any foreign government regarding the export marketing activities in any country of any national of the U.S. employing more than 25 individuals in South Africa who does not adhere to the principles stated in the Order. It is the purpose of this subchapter to implement these requirements of E.O. 12532.

(b) *Relation to the Voluntary Sullivan System.* It has been the policy of the United States since 1977 to encourage voluntary adherence to the Sullivan Code agreed to by a majority of U.S. business firms that operate in South Africa. The requirements of the voluntary code exceed those of the E.O 12532 in certain respects, and the voluntary nature of the code has set an example for all firms in South Africa. The regulations set forth in this subchapter recognize that some U.S. nationals are not willing to subscribe to the Sullivan Code, and these regulations do not require firms to subscribe to the voluntary system. All U.S. nationals described in § 62.2 and § 63.1 are subject to the requirements of this subchapter. Such nationals who are *bona fide* participants in the Sullivan system are exempt from certain reporting requirements in accordance with § 63.1(d).

§ 60.2 Scope of application.

The requirements of this subchapter are applicable to U.S. nationals (defined in § 61.5) who:

(a) Employ at least 25 individuals in South Africa;

(b) Own or control more than 50 percent of the outstanding voting securities of a foreign subsidiary or other entity that employs at least 25 individuals in South Africa; or

(c) Control in fact any other foreign entity that employs at least 25 individuals in South Africa. Such control consists of the authority or ability of the domestic concern to establish or direct the general policies or day-to-day operations of a foreign subsidiary or entity in South Africa. Such authority or ability will be presumed under the circumstances described below, subject to rebuttal by competent evidence provided to the Department of State at the time of registration (see § 62.1):

(1) The domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or entity, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(2) The foreign subsidiary or entity is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(3) A majority of the members of the board of directors of the foreign subsidiary or entity are also members of the comparable governing body of the domestic concern;

(4) The domestic concern has the authority to appoint the majority of the members of the board of directors of the foreign subsidiary or entity; or

(5) The domestic concern has the authority to appoint the chief operating officer of the foreign subsidiary or entity.

PART 61—DEFINITIONS

Sec.
61.1 Adherence.
61.2 Fair labor standards.
61.3 Office of Southern African Affairs.
61.4 United States.
61.5 U.S. national.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861).

§ 61.1 Adherence.

For purposes of this subchapter, adherence means—

(a) Agreeing to implement the principles specified in § 61.2 in South Africa,

(b) Taking good faith measures to implement each of these principles, and

(c) Reporting accurately to the Department of State on the measures taken to implement the principles in accordance with § 63.1.

§ 61.2 Fair labor standards.

(a) The fair labor standards referred to in this subchapter are as follows:

(1) Desegregating the races in each employment facility;

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin;

(3) Assuring that the pay system in South Africa is applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;

(5) Increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(b) The supplement to this subchapter contains illustrative examples of the fair labor practices referred to in this subchapter.

§ 61.3 Office of Southern African Affairs.

"Office of Southern African Affairs" means the Office of Southern African Affairs, Bureau of African Affairs, Department of State, Washington, D.C. 20520.

§ 61.4 United States.

"United States," when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, and the District of Columbia.

§ 61.5 U.S. National.

For purposes of this subchapter, "U.S. national" means:

(a) Citizens or nationals of the United States or permanent residents of the United States (defined in the Immigration and Nationality Act (8 U.S.C. 1101, 101(a)20, 60 Stat. 163)); and

(b) Corporations, partnerships, and other business associations organized under the laws of the United States, any state or territory thereof, or the District of Columbia.

PART 62—REGISTRATION

Sec.
62.1 Registration.
62.2 Notification of changes in information furnished by registrants
62.3 Maintenance of records by registrants.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 62.1 Registration.

Any U.S. national referred to in § 60.2 is required to register with the Department of State and to indicate whether the U.S. national or entity referred to in § 60.2 agrees to implement the principles stated in § 61.2. They may also indicate whether they are participants in the voluntary Sullivan system. Registration can be accomplished by filing a completed form DSP-95 with the Office of Southern African Affairs. Any such national who believes that it should not be required or is unable to report on the fair labor practices of a foreign subsidiary or entity described in § 60.2 (c) of this subchapter should provide a detailed explanation of the reasons. The explanation should be in the form of a letter, and should accompany the completed registration form. A detailed questionnaire on fair labor practices will be provided by the Office of Southern African Affairs on an annual basis to all registrants. No fee is required for registration.

§ 62.2 Notification of changes in information furnished by registrants.

A registered U.S. national must notify the Department of State of any material changes in the information contained in the registration. Examples of material changes include the establishment, acquisition, or sale of a subsidiary or of a foreign affiliate, a merger, a change of location, or engaging in a different kind of business in South Africa. Such information should be provided within 60 days from the date of the material change.

§ 62.3 Maintenance of records by registrants.

(a) A U.S. national who is required to register pursuant to § 62.1 must maintain records concerning the fair labor practices employed in South Africa by the U.S. national or any entity referred to in § 60.2 effective January 1, 1986. Such records must be maintained for a period of 3 years.

(b) Records maintained under this section shall be available at all times for inspection by the Director of the Office of Southern African Affairs or a person designated by the Director.

PART 63—GENERAL POLICIES AND REPORTING REQUIREMENTS

Sec.
63.1 General policies.
63.2 Influencing activities outside the workplace.
63.3 State Department review.
63.4 Waiver.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 63.1 General policies.

(a) *General.* Any U.S. national or entity described in § 60.2 who does not adhere to the fair labor standards stated in § 61.2 of this subchapter shall be ineligible to receive the assistance specified in § 65.1 (b).

(b) *Failure to register.* Any such U.S. national who does not register with the Department of State prior to February 15, 1986, in accordance with § 62.1 shall be ineligible for the assistance specified in § 65.1 and shall be subject to the penalties specified in § 65.2.

(c) *Annual reports.* All U.S. nationals subject to the requirements of this

subchapter shall provide an annual report to the Department of State describing their implementation of the fair labor principles specified in § 61.2, including implementation by any entity described in § 60.2. They shall do so by submitting a completed questionnaire furnished by the Department of State at the time of registration to the Office of Southern African Affairs. The first report shall be provided no later than February 15, 1987.

(d)(1) *Sullivan participants.* Any U.S. national who is a *bona fide* participant in the Sullivan reporting and implementing system is exempt from submitting the questionnaire referred to in paragraph (c) of this *"Bona fide"* participation means (i) subscribing to the Sullivan Code and (ii) filing the report required by the Sullivan monitoring mechanism with that organization and (iii) receiving a Category I, II, or IIIA standing. *Bona fide* participants are deemed to be adhering to the fair labor standards for purposes of this subchapter. Such U.S. nationals shall be required to file a letter with the Office of Southern African Affairs on an annual basis certifying that they are *bona fide* participants in the Sullivan system. Each such letter shall be provided not later than February 15 of each calendar year, commencing on February 15, 1987. Each such letter shall include the following statement:

I certify that [name of firm] is a *bona fide* participant in the Sullivan system for fiscal year [insert], and the firm received a [insert] rating from the Sullivan system for that period.

Any U.S. national participating in the Sullivan system who receives a Category IIIB standing must inform the Department of State by February 15. If such a national receives a Category IIIB standing for the next fiscal year, it shall not be deemed to be a *bona fide* participant pursuant to this subsection and must thereafter complete the required State Department questionnaire.

(2) U.S. nationals who become participants in the Sullivan system in 1986 will be required to submit the first letter referred to in paragraph (d)(1) of this section no later than November 15, 1987.

§ 63.2 Influencing activities outside the workplace.

U.S. nationals referred to in subsection § 60.2 are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace by measures such as (a) supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas; (b) by influencing other companies in South Africa to follow the principles specified in § 62.2; (c) by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and (d) by making provision for adequate housing and education for families of employees within the proximity of the employee's place of work.

§ 63.3 State Department review.

(a) The Office of Southern African Affairs shall review each report submitted pursuant to § 63.1(c) to determine whether the U.S. national is adhering to the principles stated in §61.2. The Office of Southern African Affairs may request additional information from the U.S. national and take any steps that may be deemed necessary to verify the information submitted.

(b) If the Office of Southern African Affairs concludes that a person is not taking such steps, it shall afford the person thirty days to provide additional written information to the Department of State.

(c) If a U.S. national who was a participant in the Sullivan system does not file the reports required by the Sullivan monitoring system or otherwise fails to meet the standards for continued participation in the Sullivan system, the U.S. national shall immediately inform the Department of State. Such notification should be provided no later than 30 days after receipt of a notification from the Sullivan system that the person is no longer a *bona fide* participant.

§ 63.4 Waiver.

The Director, Office of Southern African Affairs, may make exceptions to the provisions of this subchapter in cases of exceptional or undue hardship or when it is otherwise in the interest of the United States Government.

PART 64—ADMINISTRATIVE PROVISIONS

Sec.
64.1 Administrative procedures.
64.2 Annual report.
64.3 Disclosure of information to the public.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 64.1 Administrative procedures.

(a) If the Assistant Secretary for African Affairs concludes that a U.S. national or entity referred to in § 60.2 is not adhering to the principles specified in § 61.2, the Office of Southern African Affairs shall immediately inform the U.S. national concerned and other U.S. Government agencies by appropriate means.

(b) Any U.S. national who has been the subject of an adverse decision pursuant to paragraph (a) of this section shall be entitled to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review of the Department of State. The requirements of Part 7 of Subchapter A of this title of CFR shall be applicable to proceedings before the Board of Appellate Review.

§ 64.2 Annual report.

The Office of Southern African Affairs shall prepare an annual report regarding implementation of Part 63 of this subchapter, which shall be forwarded to other affected U.S. Government agencies and the appropriate committees of the United States Congress.

§ 64.3 Disclosure of information to the public.

Subchapter R of this title of CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of Subchapter R apply to such disclosures by the Office of Southern African Affairs.

PART 65—NON-ADHERENCE AND PENALTIES

Sec.
65.1 Denial of export marketing support.
65.2 Civil and criminal penalties.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 65.1 Denial of export marketing support.

(a) In accordance with Part 63 of this subchapter, no department or agency of the United States may intercede with any foreign government regarding export marketing activity in any country of any U.S. national or entity referred to in § 60.2 who does not adhere to the principles stated in § 61.2 with respect to that U.S. national's operations in South Africa.

(b) For purposes of this section, "intercede with any foreign government regarding export marketing activity" means any contact by U.S. Government personnel with officials of any foreign government which involves or contemplates any effort to assist in selling a good, service, or technology in a foreign market. The following are examples of the activities prohibited:

(1) Assisting non-complying firms by arranging appointments with foreign government officials relating to the

pursuit by the firm of a bid, project, or other commercial activity.

(2) Intervening with a foreign government on behalf of a non-complying firm in pursuit of a bid or project, unless such intervention is necessary to ensure a foreign government's compliance with its obligations, if any under the Agreement on Government Procurement of April 12, 1979 (T.I.A.S. No. 10403);

(3) Assisting non-complying firms in obtaining end-user or other foreign government certificates or documentation necessary for the issuance of U.S. export licenses;

(4) Taking any action to assist a non-complying firm in selling its products, services or technology with respect to a foreign government, including assistance in making appeals regarding foreign government procedures and practices adversely affecting the firm's ability to gain access to the foreign marketplace;

(5) Participation by non-complying firms in Department of Commerce sponsored trade exhibitions and video catalog shows, trade missions and certified shows in foreign countries in which business is conducted primarily with the host government;

(6) Intervening with foreign government officials on behalf of a non-complying firm at any trade fairs, trade missions, and video catalogue shows (i.e., other than those in paragraph (b)(5) of this section).

(c) The following activities with respect to non-complying firms are not prohibited pursuant to this section of the Executive Order:

(1) Preparing market research for use by more than one company and providing general export information;

(2) Distributing generally available informational publications such as Overseas Business Reports, Foreign Economic Trends, and Business America; and

(3) Multilateral and bilateral, government-to-government trade negotiations to resolve trade issues which may affect non-complying firms.

§ 65.2 Civil and criminal penalties.

(a) This subchapter is promulgated pursuant to the authority of E.O. 12532 and the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA)). Section 206 of this Act provides that:

A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent to any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

Section 206 of the International Emergency Economic Powers Act is applicable to violations of this subchapter and to any license, ruling, regulation, order, direction, or instruction issued hereunder. These criminal and civil penalties are applicable to failures to comply with the registration and reporting requirements established in this subchapter. However, they are not applicable to failures to adhere to the principles stated in § 61.2.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) This section does not apply to the financing of exports by the Export-Import Bank to South Africa. Such financing continues to be the subject of the requirements contained in section 2(b)(9) of the Export-Import Bank Act of 1945, as amended.

Appendix to Subchapter G—Examples of Fair Labor Practices

The following are illustrative examples of the fair labor standards specified in § 61.2.

(1) Desegregating the races in each employment facility:

(a) Removing all race designation signs;

(b) Desegregating all eating, medical, recreation, and work facilities; and

(c) Terminating all regulations which are based on racial discrimination or preference.

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin:

(a) Assuring that any health, accident, pension, or death benefit plans that are established are nondiscriminatory and open to all employees without regard to race or ethnic origin; and

(b) Implementing equal and nondiscriminatory terms and conditions of employment for all employees, abolishing job restrictions and differential employment criteria which discriminate on the basis of race or ethnic origin.

(3) Assuring that the pay system is applied to all employees without regard to race or ethnic origins:

(a) Assuring that any wage and salary structure that is implemented is applied equally to all employees without regard to race or ethnic origin;

(b) Eliminating any distinctions between hourly and salaried job classifications on the basis of race or ethnic origin; and

(c) Eliminating any differences in seniority and in grade benefits which are based on race or ethnic origin.

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families:

(a) Offering a minimum wage or salary structure that is 30 percent or more higher than the most recent University of South Africa Minimum Living Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates; or

(b) Offering a minimum wage or salary that is 30 percent or more higher than the most recent University of Port Elizabeth Household Subsistence Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates.

(5) Increasing, by appropriate means, the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs:

(a) Developing training programs that will prepare substantial numbers of persons disadvantaged by apartheid for such jobs as soon as possible, including: (i) Expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of employees, including establishing and expanding programs to enable employees to further education and skills at recognized educational facilities; and (ii) creating on-the-job training programs and facilities to assist employees to advance to higher paying jobs requiring greater skills.

(b) Establishing procedures to assess, identify, and actively recruit employees with potential for further advancement;

(c) Identifying persons disadvantaged by apartheid with significant management potential and enrolling them in accelerated management programs; and

(d) Establishing timetables to carry out this principle.

(6) Taking reasonable steps to improve the quality of employee's lives outside the work environment with respect to housing, transportation, schooling, recreation, and health:

(a) Providing assistance to employees disadvantaged by apartheid for housing, health care, transportation, and recreation either through the provision of facilities or services or providing financial assistance to employees for such purposes, including the expansion or creation of in-house medical facilities or other medical programs to improve medical care for employees disadvantaged by apartheid and their dependents; and

(b) Participating in the development of programs that address the educational needs of employees, their dependents, and the community.

(7) Implementing fair practices by recognizing the right of all employees, regardless of racial or other distinctions, to

self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity:

(a) Refraining from: (i) interfering with, restraining, or coercing employees in the exercise of their rights of self-organization under this paragraph; (ii) dominating or interfering with the formation or administration of any labor organization or sponsoring, controlling, or contributing financial or other assistance to it; (iii) encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment; (iv) discharging or otherwise disciplining or discriminating against any employee who has exercised any rights of self-organization under this principle; and (v) refusing to bargain collective with any organization freely chosen by employees pursuant to this principle.

(b) Allowing employees to exercise rights of self-organization, including solicitation of fellow employees during nonworking hours, distribution and posting of union literature by employees during nonworking hours in nonworking areas, and reasonable access to labor organization representatives to communicate with employees on the employer's premises at reasonable times where there are no other available channels which will enable the labor organization to communicate with employees through reasonable efforts.

Dated: December 23, 1985.

George P. Shultz,

The Secretary of State.

[FR Doc. 85-30928 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-08-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates by reference certain interest rates published by another federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from January 1, 1986, to March 31, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-956-5050 (202-956-5059 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On May 31, 1984 (49 FR 22642), the Pension Benefit Guaranty Corporation (the "PBGC") pusblished a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H. 15 ("Selected Interest Rates").

Since the regulation incorporates by reference interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. See 50 FR 39664 (September 30, 1985). This amendment adds to this appendix the interest rate of 9½ percent, which will be effective from January 1, 1986, to March 31, 1986. This is the same interest rate that was in effect for the fourth quarter of 1985. This rate is based on the prime rate in effect on December 16, 1985, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by the regulation are those published in the Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93-406, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302 and 1236-1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (%)
.	.	.	.
01/01/86	03/31/86	12/16/85	9.50

Issued at Washington, DC, on this 23d day of December, 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-30653 Filed 12-30-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Financial Guidelines for Qualification of Surety Companies Under 31 U.S.C. 9304-9308

AGENCY: Financial Management Service, Fiscal Service; Treasury.

ACTION: Final Financial Guidelines.

SUMMARY: The Secretary of the Treasury is required by 31 U.S.C. 9305 to determine that each surety company that wishes to do business with the United States is financially sound and is able to keep and perform its contracts. The financial guidelines that Treasury hereby publishes supplement the financial standards that are already being used to make those determinations. These guidelines will be used to evaluate applications for (and renewals of) Certificates of Authority received by Treasury on or after January 1, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, (202) 634-2319.

SUPPLEMENTARY INFORMATION: On September 5, 1985, the Financial Management Service (FMS) published a Notice of Revised Proposed Guidelines (50 FR 36115), which proposed new guidelines to supplement the current financial standards which are used to assist FMS in making a statutorily-required determination that a surety company is solvent and able to keep and perform its contracts in order to qualify as an acceptable surety on federal bonds.

Eight comments were received. The majority of the comments were highly supportive of the proposed guidelines. Some of the respondents suggested modifications. This Notice adopts some of these and explains how others will be incorporated within internal operating procedures.

Three respondents expressed concern that Treasury had not specifically stated that a company would be provided a chance to respond to Treasury's concern over its financial condition. Specific wording to this effect has been added.

Two respondents expressed concern that strict adherence to the ratios, would penalize companies for taking proper corrective measures in those instances where such measures negatively impacted ratio results. Treasury's present financial guidelines (Instruction XIII), state that a company should submit a supporting memorandum to Treasury that would explain significant actions taken which would not be evident from a review of the company's financial statements. This would include actions which would distort ratio results. Should a company fail to submit appropriate explanations with its annual Treasury filing, the company would have an opportunity to submit such an explanation if Treasury notifies the company of concerns it may have relative to its ratio results. We feel that these procedures will prevent a company from being unjustly penalized.

One respondent expressed concern that reinsurers, because of the nature of their business, may regularly fail one or more tests, without such results necessarily reflecting their stability. The response included statements specifically describing perceived problems with certain ratios and recommended modifications. While recognizing the validity of these concerns, in some circumstances, we determined that the most appropriate manner in which to address them would be to include the respondent's statements of problems within our internal operating procedures. These statements will then be considered in determining whether a reinsurer should receive a notice of concern over its ratio results.

Finally, we have included an additional paragraph within the final notice addressing the consideration of ratios based on consolidated financial data in certain instances. This paragraph was added at the suggestion of one respondent.

The Department of the Treasury has determined that this notice is not a major rule for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Furthermore, it has been determined in accordance with 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, the regulatory flexibility analysis referred to by 5 U.S.C. 604 is not required and has not been conducted.

The Department of the Treasury will therefore adopt the following financial guidelines:

Additional Financial Guidelines

Effective December 31, 1985, in order to qualify for a Certificate of Authority to do business with the Government as a surety, or to be recognized as an admitted reinsurer on non-federal business, a company will be expected to maintain usual results for the following ratios.

Ratio	Usual ranges	
	Over	Under
1. Premium to surplus		300
2. Change in writings	−33	33
3. Surplus aid to surplus		25
4. Two year overall operating ratio		100
5. Investment yield	6	
6. Change in surplus	−10	50
7. Liabilities to liquid assets		105
8. Agents' balances to surplus		40
9. One year reserve development to surplus		25
10. Two year reserve development to surplus		25
11. Estimated current reserve deficiency to surplus		25

In those instances where a company cedes a substantial portion of its premiums to an affiliated company, the ratios for the consolidated statements of the company and its affiliates will also be considered.

In those instances where a company's ratio results do not fall within the usual ranges, the Treasury may notify the company of Treasury's concern over tis financial condition. The company will be afforded an opportunity to respond to Treasury's concern.

If information submitted by the company to support its continued financial strength is not sufficient to satisfy Treasury of the company's continued ability to keep and perform its contracts, Treasury will commence proceedings to terminate the company's Certificate of Authority.

Termination procedures as described at 31 CFR 223.17 will be followed in all instances.

Treasury may revise these guidelines in the future should industry conditions change significantly.

Dated: December 13, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-30951 Filed 12-30-85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

38 CFR Part 3

Basic Eligibility for Loan Guaranty Benefits

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations concerning loan guaranty eligibility for Vietnam era veterans. This amendment is necessary because of a 1978 change of law. The effect of this amendment will be to equalize the loan guaranty eligibility of Vietnam era veterans with that of veterans of World War II and the Korean Conflict.

DATES: This amendment is effective October 18, 1978, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits (202) 389-3005.

SUPPLEMENTARY INFORMATION: On page 28224 of the **Federal Register** of July 11, 1985, the VA published a proposed amendment to 38 CFR § 3.315(b) to correct a previous oversight with respect to loan guaranty eligibility for Vietnam era veterans. Interested persons were given until August 12, 1985, to submit comments, suggestions or objections to the proposal. While no official comments were received, a claims examiner from the VA's New York Regional Office identified a technical error in the publication and suggested that a pertinent cross-reference be added.

The published proposal to amend paragraph (b) inadvertently ended with the United States Code citations for paragraph (c) which is not being amended. This error has been corrected in the final rule.

It was suggested that a cross-reference to the minimum active duty service requirements of § 3.12a might also be appropriate. We agree that such an addition is desirable for purposes of clarity and have amended the final rule to alert VA adjudicators to that requirement.

The proposed rule has been adopted with the amendment noted above.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604. In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program number is 64.119)

Approved: November 27, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, COMPENSATION AND PENSION, § 3.315(b) is revised to read as follows:

§ 3.315 Basic eligibility determinations—dependents, loans, education.

* * * * *

(b) *Loans.* If a veteran of World War II the Korean conflict or the Vietnam era had less than 90 days of service, or if a veteran who served after July 25, 1947, and prior to June 27, 1950, or after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975, has less than 181 days of service on active duty as defined in §§ 36.4301 and 36.4501, eligibility of the veteran for a loan under 38 U.S.C. ch. 37 requires a determination that the veteran was discharged or released because of a service-connected disability or that the official service department records show that he or she had at the time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability. These determinations are subject to the presumption of incurrence under § 3.304(b). Determinations based on World War II, Korean conflict and Vietnam era service are also subject to the presumption of aggravation under § 36.306(b) while determination based on service on or after February 1, 1955, and before August 5, 1964, or after May 7, 1975, are subject to the presumption of aggravation under § 3.306 (a) and (c). The provisions of this paragraph are also applicable, regardless of length of service, in determining eligibility to the maximum period of entitlement based on discharge or release for a service-connected disability. (See also the minimum service requirements of § 3.12a.)

(38 U.S.C. 1802, 1807, 1818)

* * * * *

[FR Doc. 85-30859 Filed 12-30-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[FRL-2947-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is amending the list of hazardous wastes under the Resource Conservation and Recovery Act (RCRA) by redefining the universe of solvents considered listed hazardous wastes. EPA is taking this action to close a major loophole created by the manner in which spent solvents were originally listed as hazardous wastes. The effect of today's rule will be to bring certain spent solvent mixtures under RCRA Subtitle C control.

DATES: *Effective Date:* This regulation becomes effective January 30, 1986. (See Section II-E for further details.)

Notification—The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement as unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. Persons who generate, transport, treat, store, or dispose of these wastes, and have not previously notified and received an identification number must get an identification number pursuant to 40 CFR 262.12 before they can generate, transport, treat, store, or dispose of these wastes.

Interim Status—All existing hazardous waste management facilities (as defined in 40 CFR 270.2) which treat, store, or dispose of hazardous wastes under interim status (section 3005(e) of RCRA), must file with EPA a Part A permit application. Under the Hazardous and Solid Waste Amendments of 1984, a facility is also eligible for interim status if it was in existence on the effective date of any statutory or regulatory change under RCRA that requires it to obtain a section 3005 permit. Facilities which have qualified for interim status, under section 3005(e)(1)(A)(ii), will not be allowed to manage the wastes covered by today's rule after January 30, 1986,

unless they have an EPA identification number and they submit a Part A permit application to EPA by January 30, 1986.

If the facility has received a permit pursuant to section 3005, however, it will not be allowed to treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store, or dispose of these wastes.

ADDRESSES: The official record for this rulemaking is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1985, EPA proposed to amend the regulations for hazardous waste management under RCRA by redefining the spent solvent listing—EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005—to include mixtures containing ten percent or more total listed solvent (by volume). See 50 FR 18378. EPA initiated this action to close a major regulatory loophole created by the manner in which the original listings were drafted (*i.e.*, only the technical grade, practical grade, or pure form of the solvents were covered).

The Agency listed these solvents as hazardous waste based on their toxicity, mobility, and persistence in the environment (and in some cases, ignitability). Also, spent solvents have been involved in hazardous waste damage incidents more frequently than any other type of waste. In establishing a regulatory threshold for solvent mixtures, the Agency attempted to determine the concentrations at which solvents are known to cause damage to human health or the environment. Since the Agency has not yet developed health-based thresholds for many of these solvents, however, we sought to establish regulatory thresholds for mixtures based on considerations other than minimum concentrations of solvents that can cause adverse health effects. Thus, the Agency proposed to expand the category of spent solvents considered hazardous wastes to include spent solvent mixtures containing ten percent or more (by volume) of total listed solvents. As a point of clarification, the ten percent threshold applies to solvent mixtures, before use.[1] The Agency believes that establishing a threshold level well below the minimum solvent concentration typically used in solvent formulations would bring the majority of solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures or *de minimis* concentrations. Furthermore, Agency data demonstrate that at these concentrations these solvents are known to cause substantial harm to human health. As noted above, the Agency has not developed health-based standards or regulatory thresholds for all of the listed solvents. See 50 FR 18379, April 30, 1985. The level set by today's rule is an interim measure, and may be modified or superceded when work on the Toxicity Characteristic is completed.[2]

In addition, the Agency proposed to renumber the list of solvents by deleting F002, F003, F004, F005, and modifying F001 to include all solvents formerly listed as F001 through F005. We specifically requested comments on whether solvents should be listed under a single hazardous waste number, or whether halogenated solvents should be listed separately from non-halogenated solvents. The Agency also invited comments on whether we should continue to list as hazardous wastes solvents which originally were listed solely on the basis of their ignitability (F003).

We received a number of comments on the proposed listing. We have evaluated these comments and revised the rule and the original background document to the solvent listing accordingly. This notice makes final the rule proposed on April 30, 1985, and outlines EPA's response to major comments received during the 30-day comment period. Comments received on the following issues and the Agency's responses appear in the revised background document, which is available in the public docket for this rule—(1) process wastes containing solvents, (2) effect of solvents on liners, (3) human health effects posed by solvents, (4) expression of solvents by volume versus weight, and (5) format of the listing. The final rule partially fulfills EPA's obligation under the Hazardous and Solid Waste Amendments of 1984 (HSWA), which requires EPA to consider whether to list additional wastes, including additional solvents, as hazardous within 15 months of the date of enactment (HSWA section 222(a)). The Agency has proposed to add four additional solvents to the list of hazardous wastes (See 50 FR 30908, July 30, 1985). When that proposal becomes final, the ten percent threshold will also apply to mixtures containing these newly regulated solvents, as well as any additional solvents listed in the future.

II. Response to Comments

Comments were submitted by generators, trade associations, State regulatory agencies, and environmentalists. This section outlines the major comments and provides responses. As stated earlier, other comments are addressed in the revised background document.

A. Clarification of the Scope of the Spent Solvent Listings

In addition to comments received during the comment period for this rule, the Agency has received numerous telephone inquiries regarding the interpretation of the spent solvent listings (*i.e.*, the scope and applicability). Thus, in response to these comments the Agency is clarifying the universe of waste covered by the listing. We believe this will aid generators and treatment, storage, and disposal facilities in determining whether solvent-bearing wastes (including solvent mixtures) handled or generated at their facility will be regulated as a result of this rule.

First, the spent solvent listings cover only those solvents that are used for their "solvent" properties—that is, to solubilize (dissolve) or mobilize other constituents. For example, solvents used in degreasing, cleaning, fabric scouring, as diluents, extractants, reaction and synthesis media, and similar uses are covered under the listing (when spent). A solvent is considered "spent" when it has been used and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed.

On the other hand, process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing. The products themselves also are not covered. See the original solvent listing background

[1] In cases (such as enforcement actions) where the regulatory status of a spent solvent mixture containing listed solvents is questionable, the Agency considers the waste to be the listed waste, unless the generator can prove that the virgin solvent mixture contained less than ten percent total listed solvents. The Agency takes this position based on data which indicate that solvent mixtures used in commerce typically contain greater than ten percent total solvents.

[2] The Agency intends to propose to expand the EP toxicity characteristic within the next two months.

document (November 14, 1980) available in the docket.

Since the threshold level promulgated today is not based on health criteria, but rather on typical use patterns, we are not applying this threshold to all wastes that may contain one or more of these solvents. Instead, we will rely on the expansion of the EP toxicity characteristic to bring these waste streams into the hazardous waste management system.

B. Applicability of the Ten Percent Threshold Level for Solvent Mixtures

The majority of commenters support the ten percent threshold level. In addition, no one questioned whether these wastes are hazardous. However, several commenters suggested that the Agency develop health-based thresholds which would be protective of human health and the environment.

The Agency agrees with the commenters; however, at this time, we do not have the benefit of pre-established health-based thresholds for many of the listed solvents. Accordingly, this rule does not define the minimum concentration at which mixtures are considered hazardous, rather, it expands the category of materials considered "spent solvents" to include certain mixtures containing one or more of the listed solvents.

Another commenter stated that the ten percent threshold will relax current hazardous waste management practices since many persons in the regulated community have interpreted the solvent listings to include *all* solvent mixtures.

The Agency does not agree with the commenter. Agency data indicate that the ten percent threshold will capture the majority of solvents (mixtures) used in commerce simply because it represents a level well below the minimum concentration that is needed to impart the characteristics for which solvents are used. Also, the Agency believes that solvent formulators cannot successfully reformulate below the ten percent level and retain the desired characteristics of solvent mixtures.

In addition, one commenter asked whether the ten percent threshold applies to solvents listed solely for ignitability (*i.e.*, F003).

When EPA proposed the ten percent threshold for solvent mixtures, we included the ignitable solvents. The Agency has determined, however, that these solvents may not be ignitable at such low concentrations. Since the Agency has not evaluated these solvents for their toxicity, we are not applying the ten percent threshold to ignitable solvents.

C. Renumbering of EPA Hazardous Waste Nos. F001–F005

One commenter stated that renumbering of the listing will increase compliance costs for persons generating and handling hazardous waste due to the cost of relabeling containers, retraining workers, and revising hazardous waste management plans. Another commenter stated the renumbering would cause confusion in the future when annual reports, data manifests, transportation and storage logs are evaluated and compared with past records. Several commenters are also concerned that workers handling these toxic or ignitable solvents would be unaware of hazards posed by the waste (*e.g.*, corrosivity, toxicity or ignitability) if all solvents are grouped under a single waste code. Another commenter stated that many TSD's are "permitted" to handle only chlorinated solvents (F001 and F002). Thus, if all 27 solvents are listed under a single waste code, these facilities would face difficulties in distinguishing non-ignitable solvents from ignitable solvents (F003) which they may not be equipped to handle. Several commenters also stated that halogenated solvents should be distinguished from non-halogenated solvents because of differing management standards.

In considering these comments, the Agency has concluded that renumbering may not accomplish the objective for which it was initially considered—that is, to simplify recordkeeping and reporting for those who generate and manage these wastes. Rather, commenters have indicated that the proposed change will increase compliance costs and cause confusion in recordkeeping. In view of these concerns, we are retaining the original F001–F005 listings. Therefore, for purposes of recordkeeping and reporting, notification and manifesting, generators should specify each solvent constituent in a mixture, provided that a particular solvent constituent is not a contaminant or present in *de minimis* concentrations.

D. Regulation of Ignitable Solvents—F003

Several commenters were in favor of deleting ignitable spent solvents (F003) from the list of hazardous wastes. They stated that these solvents also are considered "hazardous waste" under the characteristic of ignitability; therefore, the listing is duplicative and unnecessary. One commenter, however, favored retaining the listing because many small facilities are not likely to have access to flash point testing.

Although the commenters are correct that ignitable spent solvents would exhibit the ignitability characteristic, these solvents are likely to contain other toxic contaminants. In fact, solvents become spent when they have been contaminated with other materials (*i.e.*, toxic heavy metals, or toxic organic compounds) and must be disposed, reprocessed, or reclaimed. If we were to remove these solvents from the list of hazardous wastes, we believe such action would conflict with the spirit of one of the new requirements under the Hazardous and Solid Waste Amendments of 1984. In particular, the Administrator is required, in evaluating delisting petitions, to consider factors (including additional constituents) other than those for which the waste originally was listed if there is a reasonable basis to believe that the waste still may be hazardous. (See 50 FR 28742, July 15, 1985.) Although this provision discusses generator-specific delisting petitions, we believe it consistent to make the same finding for a generic delisting as well, since such action ordinarily has far more potential impact on the environment than a generator-specific delisting. Thus, since spent solvents reasonably are likely to contain other toxicants at levels of regulatory concern, and since we have not evaluated those wastes for these other toxicants, we believe it inappropriate to remove these solvents from the hazardous waste list. Rather, persons who wish to delist these wastes will need to submit a site-specific delisting petition pursuant to the provisions in 40 CFR 260.20 and 260.22.

E. Effective Date

Several comments were received regarding the "effective immediately" provision of the rule. One commenter stated that the effective immediately provision is appropriate; however, several commenters stated that industry needs time to comply with the rule. They specifically stated that smaller companies or newly regulated facilities will be burdened by the provision. Companies need time to train personnel, and to design and build hazardous waste storage and processing equipment.

On November 29, 1985, the Agency promulgated a final rule to regulate waste and used oil burned for energy recovery in boilers and industrial furnaces (see 50 FR 49164). These rules prohibit the burning of hazardous waste in non-industrial boilers, including used oils adulterated by mixing with spent chlorinated solvents.

We believe the effectiveness of the rules on burning in non-industrial boilers will be reduced if solvent mixtures remain unregulated. Generators would be able to continue to commingle these solvents with waste oils destined for energy recovery. Based on the toxicity of chlorinated compounds, the Agency is concerned with possible adverse health effects posed by the burning of these wastes.

In balancing both of these concerns, the agency is establishing an effective date of thirty days for this rulemaking. This should allow generators adequate time to come into compliance and will still support the goals of the rule on burning in non-industrial boilers. The above reasons constitute good cause under the effective date section of RCRA, 42 U.S.C. 6930(b) and the Administrative Procedure Act, 5 U.S.C. 5531.

III. Effect of Today's Action

Today's amendment will close a major regulatory loophole which allows toxic solvent mixtures to remain unregulated; persons generating, treating, storing, transporting, or disposing of the wastes will be subject to the appropriate requirements under 40 CFR Parts 260 to 271. Effective in thirty days wastes covered by today's rulemaking are subject to the requirements for transportation, storage, and disposal of hazardous waste.

IV. Regulatory Impact

Under Executive Order 12291, EPA Must judge whether a proposed or final rule is "major" and, therefore subject to the requirement of a Regulatory Impact Analysis. This final rule is not a major rule because it is not expected to result in an effect on the economy of $100 million or more. Although some generators may be newly regulated, data from the RCRA notification data base indicate that many solvent generators also generate other RCRA hazardous wastes. The Agency believes, therefore, that the majority of solvent generators are already regulated under RCRA. Some of these generators may experience increased regulatory requirements; however, many generators of solvent mixtures are currently regulated under State hazardous waste regulations.

The Agency has completed an initial analysis of the potential impacts of this rule. (No comments were received on this analysis. The analysis indicates that worst-case costs may be substantial, but they are expected to be experienced by only a few generators. There will be no adverse impact on the ability of U.S.-based enterprises to compete with the foreign-based enterprises in domestic or export markets. Since this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

Although some generators will be newly regulated and some will experience an increased regulatory burden, this amendment is not expected to have a significant economic impact on a substantial number of small entities. The majority of these generators are already regulated under RCA and many are regulated under State hazardous waste regulations. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject ot OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VII. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Impacts

The solvent mixtures designated as hazardous waste by today's rule become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101 (14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center for release. (See CERCLA section 103 and 5.0 FR 13459–13522, April 25, 1985.)

The final RQs for the solvent waste streams (*i.e.*, F001–F005) and the individual solvent constituents were published on April 4, 1985, (see 50 FR 13487). According to this rule, if the waste has more than one constituent of concern, the lowest RQ assigned to any one of the constituents present in the waste represents the RQ for the waste stream (see 50 FR 13463).

VIII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is approved. States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including regulations equivalent to those promulgated. However, once authorized, a State must modify its program to include regulations substantially equivalent or equivalent to EPA's within the time periods discussed above.

List of Subjects

40 CFR Part 261

Hazardous materials, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 23, 1985.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, 40 CFR Parts 261 and 271 are amended as follows:

Part 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. 40 CFR 261.31 is amended by revising EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,2,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, and trichlorofluoromethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F001, F004, and, F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I)*
F004	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)

*(I,T) should be used to specify mixtures containing ignitable and toxic constituents.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

4. Section 271.1(j) is amended by adding the following entry to Table 1 In chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
* * * *	
Dec. 31, 1985....	Amendment of spent solvent listings to include solvent mixtures.
* * * *	

[FR Doc. 85-30890 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6693]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

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

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain federal assistance no longer available in special flood hazard areas
Region I					
Maine: Cumberland	Brunswick, town of	230042B	July 15, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1986.	Jan. 3, 1986.
Rhode Island: Washington	South Kingstown, town of	445407D	Sept. 11, 1970, Emerg.; June 23, 1972, Reg.; Jan. 3, 1986, Susp.	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1985.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain federal assistance no longer available in special flood hazard areas
Providence	Pawtucket, city of	440022D	Jan. 15, 1971, Emerg.; July 16, 1971, Reg.; Jan. 3, 1986, Susp.	July 16, 1971, July 1, 1974, June 11, 1976, Apr. 1, 1982, and Jan. 3, 1986.	Do.
Region II					
New Jersey: Bergen	Ho-Ho-Kus, borough of	340044B	Jan. 14, 1972, Emerg.; June 1, 1977, Reg.; Jan. 3, 1986, Susp.	June 22, 1973 and Jan. 3, 1986	Do.
New York: Jefferson	West Carthage, village of	360356B	July 30, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 10, 1974, Nov. 28, 1975, and Jan. 3, 1986.	Do.
Region IV					
Florida: Flagler	Beverly Beach, town of	120569B	May 12, 1977, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	June 24, 1977 and Jan. 3, 1986	Do.
North Carolina:					
Beaufort	Bethaven, town of	370015	Oct. 27, 1972, Emerg.; May 16, 1977, Reg.; Jan. 3, 1986, Susp.	Apr. 13, 1973, May 16, 1977, and Jan. 3, 1986.	Do.
Do	Aurora, city of	370014B	June 4, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 3, 1974, May 28, 1976, and Jan. 3, 1986.	Do.
Georgia: Glynn	Brunswick, city of	130093B	Mar. 6, 1974, Emerg.; June 19, 1985, Reg.; Jan. 3, 1986, Susp.	May 24, 1974, Jan. 9, 1976, and June 19, 1985.	Do.
Region V					
Illinois:					
Mercer	Unincorporated areas	170806	Apr. 8, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 23, 1977 and Jan. 3, 1986	Do.
Pike	do	170551	May 1, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 13, 1974, Feb. 18, and Jan. 3, 1986.	Do.
Scott	do	170905B	Apr. 16, 1979, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Jan. 28, 1977 and Jan. 3, 1986	Do.
Alexander	do	170811B	June 6, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 27, 1974, July 22, 1977, and Jan. 3, 1986.	Do.
Ohio: Richland	Mansfield, city of	390477C	Apr. 2, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 17, 1974, Oct. 17, 1975, Mar. 2, 1979, and Jan. 3, 1986.	Do.
Region VII					
Missouri: Moniteau	Lupus, city of	290239A	Mar. 13, 1985, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Jan. 3, 1986	Jan. 3, 1987
Region VIII					
Colorado: Garfield	Unincorporated areas	080205B	Mar. 27, 1974, Emerg.; Dec. 15, 1977, Reg.; Jan. 3, 1986, Susp.	Dec. 15, 1977, and Jan. 3, 1986	Jan. 3, 1986.
Region I—Minimal Conversions					
Maine: Oxford	Stoneham, town of	230340A	Oct. 1, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Feb. 21, 1975 and Jan. 3, 1986	Jan. 3, 1986.
Massachusetts: Hampshire	Middlefield, town of	250166B	Jan. 22, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 20, 1974, Dec. 10, 1976, and Jan. 3, 1986.	Do.
Rhode Island: Kent	West Greenwich, town of	440037A	Oct. 10, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Jan. 24, 1975 and Jan. 3, 1986	Do.
Vermont: Orleans	Albany, town of	500243A	Feb. 10, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Feb. 7, 1975 and Jan. 3, 1986	Do.
Region II					
New York: Otsego	Cherry Valley, village of	361449B	Oct. 1, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 15, 1974, May 28, 1976, and Jan. 3, 1986.	Do.
Do	Morris, town of	361273C	Apr. 12, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 15, 1974, July 9, 1976, July 1, 1977, and Jan. 3, 1986.	Do.
Do	Richard Springs, village of	361360A	Sept. 11, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 15, 1974 and Jan. 3, 1986	Do.
Region VI					
Arkansas: Lonoke	England, city of	050133B	May 6, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 10, 1974, Oct. 3, 1975, and Jan. 3, 1986.	Do.
Region V					
Wisconsin:					
Walworth	Genoa City, village of	550465B	Mar. 5, 1975, Emerg.; Sept. 4, 1985, Reg.; Jan. 3, 1986, Susp.	Jan. 9, 1974, May 15, 1976, and Sept. 4, 1985.	Do.
Bayfield	Bayfield, city of	550017A	June 6, 1974, Emerg.; Sept. 4, 1985, Reg.; Jan. 3, 1986, Susp.	July 16, 1976, Sept. 18, 1985	Do.
Region VII					
Nebraska: Buffalo	Shelton, village of	310019B	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Nov. 1, 1985, Rein.; Jan. 3, 1985, Susp.	Mar. 19, 1976, Sept. 3, 1976, and Sept. 27, 1985.	Do.
Region I					
Maine: Sagadahoc	Bath, city of	230118B	Mar. 27, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Nov. 1, 1974, May 10, 1977 and Jan. 17, 1986.	Jan. 17, 1986.
Massachusetts: Essex	Gloucester, city of	250082C	Dec. 1, 1972, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	July 26, 1974, Feb. 18, 1977, Oct. 1, 1986, and Jan. 17, 1986.	Do.
Region II					
New Jersey:					
Morris	East Hanover, village of	340341C	Aug. 18, 1972, Emerg.; Apr. 16, 1979, Reg.; Jan. 17, 1986, Susp.	Aug. 31, 1973, Apr. 16, 1979 and Jan. 17, 1986.	Do.
Steuben	North Hornell, village of	361477A	Oct. 3, 1974, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Jan. 3, 1975 and Jan. 17, 1986	Do.
Region V					
Illinois:					
Champaign	Sidney, village of	170033B	July 10, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Jan. 16, 1974, Oct. 10, 1975, and Jan. 17, 1986.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain federal assistance no longer available in special flood hazard areas
Morgan	Unincorporated areas	170903B	Apr 4, 1979, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	May 13, 1977 and Jan. 17, 1986.	Do.
Michigan: Shiawassee	Corunna, city of	260602A	Dec. 24, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Sept. 19, 1975 and Jan. 17, 1986.	Do.
Ohio:					
Hocking	Logan, city of	390274C	July 16, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	May 31, 1974, Sept. 10, 1970, July 13, 1979, and Jan. 17, 1986.	Do.
Athens	Nelsonville, city of	390020B	July 7, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	May 10, 1974, Apr. 16, 1976, and Jan. 17, 1986.	Do.
Do	Chauncey, village of	390017B	Dec. 17, 1976, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	June 21, 1974, Apr. 16, 1976, and Jan. 17, 1986.	Do.
Region VI					
Texas: Brazoria	Freeport, city of	485467D	June 19, 1970, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Nov. 17, 1970, July 1, 1974, Oct. 31, 1975, and Jan. 17, 1986.	Do.
Region VII					
Kansas: Barton	Albert, city of	200017A	Apr. 3, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Dec. 27, 1974, and Jan. 17, 1986.	Do.
Region I—Minimal Conversions					
Rhode Island: Providence	Foster, town of	440033B	May 14, 1975, Emerg.; Dec. 4, 1985, Reg.; Jan. 17, 1986, Susp.	Sept. 13, 1974, Sept. 10, 1976, and Dec. 4, 1985.	Do.
Region VI					
Arkansas:					
Mississippi	Dyess, town of	050143A	Sept. 10, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Oct. 18, 1974 and Jan. 17, 1986.	Do.
Prairie	De Valls Bluff, city of	050238A	Apr. 22, 1975, Emerg.; Jan. 17, Jan. 17, Reg.; 1986, Susp.	Dec. 27, 1974 and Jan. 17, 1986.	Do.
Arkansas	Gillett, city of	050325A	May 23, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Apr. 11, 1975 and Jan. 17, 1986.	Do.
Louisiana: Vernon	Leesville, town of	220229B	Oct. 17, 1974, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Nov. 23, 1973, Nov. 14, 1975 and Jan. 17, 1986.	Do.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: December 20, 1985.

Jeffrey S. Bragg,

Administrator Federal Insurance Administration.

[FR Doc. 85-30751 Filed 12-30-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6694]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646-2717, 500 C Street, Southwest, Donohoe Building—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has indentified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subject in 44 CFR Part 64

Flood insurance, floodplains.

The authority citation for Part 64 continues to read as follows:

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

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Iowa: Polk	Grimes, City of	190228A	Nov. 6, 1985, Emerg.; Nov. 6, 1985, Reg	Mar. 5, 1976 and Sept. 30, 1983.
Nevada: Clark	Mesquite, City of	320035	Nov. 6, 1985, Emerg	Nov. 1, 1985.
Wisconsin: Lincoln	Tomahawk, City of	550235B	Nov. 29, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.; Nov. 1, 1985, Rein.	Sept. 4, 1985.
California: San Diego	Poway, City of	060702	Apr. 8, 1981, Emerg.; Aug. 19, 1985, Reg.; Aug. 19, 1985, Susp.; Nov. 6, 1985, Rein.	Nov. 30, 1982.
Vermont: Orleans	Derby, Town of [1]	500248B	Feb. 13, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Nov. 5, 1985, Rein.	Dec. 13, 1974, Nov. 19, 1976 and Sept. 27, 1985.
New York: Herkimer	Newport, Town of [1]	361111B	June 3, 1976, Emerg.; Aug. 5, 1985, Reg.; Aug. 5, 1985, Susp.; Nov. 15, 1985, Rein.	Nov. 15, 1976.
Pennsylvania: Indiana	Conemaugh, Township of	421715	Nov. 18, 1985, Emerg	Dec. 6, 1974.
California: Ventura	Moorpark, City of	060712	Nov. 20, 1985, Emerg	
Vermont: Addison	Ripton, Town of [1]	500010B	Feb. 6, 1976, Emerg.; Aug. 18, 1985, Reg.; Aug. 18, 1985, Susp.; Nov. 22, 1985, Rein.	Jan. 17, 1975, Mar. 4, 1977 and Sept. 18, 1985.
Virginia: Rockbridge	Goshen, town of [2]	510217B	June 10, 1975, Emerg.; Aug. 15, 1978, Reg.; Aug. 15, 1978, Susp.; Nov. 15, 1985, Rein.	Sept. 6, 1974, May 28, 1976 and Aug. 15, 1978.
New York: Lewis	Leyden, Town of [1]	360369B	July 7, 1975, Emerg.; June 19, 1985, Reg.; June 19, 1985, Susp.; Nov. 25, 1985, Rein.	July 19, 1974 and Mar. 26, 1976.
Tennessee: Maury	Unincorporated Areas	470123	Nov. 29, 1985, Emerg	Dec. 2, 1977.
Texas: Fort Bend	Big Oaks Municipal Utility District [3]	481596 [4]	do	
Iowa: O'Brien	Sheldon, City of	190216B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.; Nov. 27, 1985, Rein.	Dec. 24, 1976 and Sept. 18, 1985.
Nebraska: Buffalo	Shelton, Village of	310019B	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Nov. 1, 1985, Rein.	Mar. 19, 1976, Sept. 3, 1976 and Sept. 27, 1985.

[1] Minimal Conversions.
[2] Declared Disaster area.
[3] This community, Big Oaks Municipal Utility District, has adopted by reference Fort Bend County, Texas (#480228) Flood Hazard Boundary Map dated 7-9-76 for floodplain management and insurance purposes.
[4] New.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region I				
Massachusetts: Essex	Newburyport, city of	250097C	Suspension withdrawn, Nov. 1, 1985	July 26, 1974, Oct. 22, 1976, Feb. 15, 1978 and Nov. 1, 1985.
Region II				
New Jersey: Bergen	Oakland, borough of	345309C	do	July 1, 1970, July 1, 1974, July 23, 1976, Aug. 20, 1982 and Nov. 1, 1985.
New York, Ulster	Rosendale, town of	360862B	do	May 31, 1974, July 2, 1976 and Nov. 1, 1985.
Region III				
Pennsylvania: Franklin	Waynesboro, borough of	420473A	do	Dec. 3, 1976 and Nov. 1, 1985.
Region IV				
Florida: Okaloosa	Valparaiso, city of	120176C	do	June 17, 1970, Jan. 9, 1976, Apr. 1, 1977 and Nov. 1, 1985.
Kentucky: Pike	Elkhorn City, city of	210356B	do	Mar. 16, 1979 and Nov. 1, 1985.
Region VI				
Louisiana:				
Jefferson	Gretna, city of	225198D	do	June 18, 1971, July 1, 1974, Feb. 13, 1976 and Nov. 1, 1985.
Do	Kenner, city of	225201B	do	June 26, 1971, July 1, 1974, Aug. 22, 1975 and Nov. 1, 1985.
Texas: Harris	LaPorte, city of	485487D	do	Feb. 17, 1971, July 1, 1974, Aug. 22, 1975 and Nov. 1, 1985.
Region VII				
Missouri: St. Louis	Unincorporated areas	290327E	do	Sept. 15, 1978, July 13, 1979, Nov. 16, 1983 and Nov. 1, 1985.
Region VIII				
Wyoming: Uinta	Evanston, city of	560054	do	May 21, 1976.
Region I—Minimal Conversions				
Maine:				
Piscataquis	Brownville, town of	230161B	do	Sept. 6, 1974 and Nov. 1, 1985.
Somerset	Caratunk, town of	230539A	do	Nov. 1, 1985.
Waldo	Liberty, town of	230259A	do	Mar. 4, 1975 and Sept. 27, 1985.
Vermont:				
Chittenden	Hinesburg, town of	500322B	do	Jan. 31, 1975, Feb. 7, 1978 and Sept. 27, 1985.
Bennington	Readsboro, town of	500017B	do	May 31, 1974, Feb. 18, 1977 and Sept. 27, 1985.
Region IV				
Mississippi: Tallahatchie	Glendora, city of	280210B	do	Jan. 10, 1975, Dec. 8, 1978 and Sept. 27, 1985.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region V				
Minnesota: Hennepin	Eden Prairie, city of	270159B	do	Mar. 1, 1974, Sept. 26, 1975 and Sept. 27, 1985.
Region VII				
Iowa: Sioux	Rock Valley, city of	190253B	do	Nov. 1, 1985.
Nebraska: Buffalo	Gibbon, city of	310015B	do	May 31, 1974, July 23, 1976 and Sept. 27, 1985.
Region II				
New Jersey:				
Middlesex	Old Bridge, township of	340265C	Nov. 15, 1985, suspension withdrawn	June 28, 1974, Apr. 30, 1976, Nov. 23, 1981 and Nov. 15, 1985.
Hunterdon	Raritan, township of	340240A	do	July 26, 1974 and Nov. 15, 1985.
New York:				
Orange	Blooming Grove, town of	360608B	do	June 7, 1974, Sept. 17, 1976 and Nov. 15, 1985.
Westchester	Yorktown, town of	360937B	do	Sept. 20, 1974, July 16, 1976 and Nov. 15, 1985.
Region III				
Washington, DC	District of Columbia	110001B	do	Nov. 1, 1974, Oct. 10, 1975 and Nov. 15, 1985.
Maryland: Wicomico	Fruitland, city of	240139B	do	Jan. 28, 1977 and Nov. 15, 1985.
Region IV				
Florida:				
Santa Rosa	Milton, city of	120276B	do	May 24, 1974, June 1, 1977, July 18, 1985
Okaloosa	Unincorporated areas	120173D	do	Jan. 3, 1975, July 1, 1977, Oct. 1, 1983 and July 18, 1985.
Region V				
Illinois: Cass	Unincorporated areas	170810B	do	Jan. 30, 1981 and Nov. 15, 1985.
Wisconsin: Shawano	do	550412	do	Oct. 14, 1977 and Nov. 15, 1985.
Louisiana: East Baton Rouge Parish.	Unincorporated areas	220058C	do	Nov. 22, 1974, July 2, 1979, July 6, 1982 and Nov. 15, 1985.
Region VIII				
Colorado: Grand	Winter Park, town of	080305A	do	Nov. 15, 1985.
Region IX				
Guam	Territory of Guam	660001B	do	Aug. 8, 1978 and Nov. 15, 1985.
Nevada: Churchill	Unincorporated areas	320030C	do	Dec. 27, 1977, June 12, 1979 and Nov. 15, 1985.
Region X				
Oregon:				
Lane	Cottage Grove, city of	410120B	do	Feb. 22, 1974, Feb. 6, 1976 and Nov. 15, 1985.
Curry	Gold Beach, city of	410054C	do	Nov. 23, 1973, Sept. 13, 1974, July 30, 1976 and Nov. 15, 1985.
Region Minimal Conversions				
Vermont: Caledonia	Waterford, town of	500200	do	Nov. 15, 1985.
Region VIII				
South Dakota:				
Spink	Redfield, town of	460081B	do	Aug. 2, 1974, Jan. 2, 1976 and Nov. 15, 1985.
Hutchinson	Parkston, city of	460042B	do	June 14, 1974, Jan. 2, 1976 and Nov. 15, 1985.

Code for reading 4th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

Issued: December 20, 1985.

[FR Doc. 85-30752 Filed 12-30-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Parts 214, 215, 227 and 252

Department of Defense Federal Acquisition Regulation Supplement Technical Data; Correction

AGENCY: Department of Defense.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on technical data which was published in the **Federal Register** on Thursday, October 24, 1985 (50 FR 43158). The action is necessary to correct the effective date which was shown in error.

DATE: Effective for all solicitations issued on or after October 18, 1985. Comments on the interim rule must be received on or before January 9, 1986.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council ODASD(P)/DARS, c/o OUSDRE(M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting the effective date to read: "Effective for all solicitations issued on or after October 18, 1985."

[FR Doc. 85-30881 Filed 12-30-85; 8:45 am]

BILLING CODE 3810-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 750

[AIDAR Notice 85-12]

Miscellaneous Changes to the AID Acquisition Regulation

Correction

In FR Doc. 85-29061 beginning on page 50301 in the issue of Tuesday, December 10, 1985, make the following correction on page 50303: In the first column, in amendatory instruction 18, in the sixth line, "Procedure" should read "Procurement".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155-5175]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions to limit the levels of fishing in 1986 for widow rockfish, the *Sebastes* complex of rockfish, Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to lower fishing rates, reduce or prevent biological stress, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed in 1985 for these species.

EFFECTIVE DATE: 0001 hours (Pacific Standard Time) January 1, 1986, until modified, superseded, or rescinded. Comments will be accepted through January 15, 1986.

ADDRESSES: Submit comments on these actions to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E.C. Fullerton at 213-548-2575, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: This action supersedes the **Federal Register** notices closing the sablefish fishery (50 FR 50309, December 18, 1985) and setting trip limits for widow rockfish (50 FR 30195, July 24, 1985), the *Sebastes* complex of rockfish (50 FR 41159, October 9, 1985), and Pacific ocean perch (50 FR 24777, June 13, 1985).

The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the means for managing over 80 species of groundfish caught in ocean waters off Washington, Oregon, and California. The FMP differentiates between species with numerical and nonnumerical optimum yields (OYs). A species which may be harvested fairly selectively has a numerical OY which is the maximum amount of that species that may be landed in a year; landings in excess of OY are prohibited. Widow rockfish (*Sebastes entomelas*), Pacific ocean perch (*S. alutus*), and sablefish (*Anoplopoma fimbria*) have numerical OYs. When landing rates become too high, trip limits are imposed to extend the fishery as long as possible throughout the year and to avoid complete closure. Nonetheless, in 1985 the coastwide sablefish fishery was closed before the end of the year because its OY quota was reached.

Species which are not harvested selectively, or for which there is very little commercial interest, or about which there is little scientific data, are part of the non-numerical OY group and are managed most commonly by gear, area, and landing restrictions. An estimate of the acceptable biological catch (ABC), the annual catch that could be taken without jeopardizing the resource's productivity, has been made for most species in this group. Some species in the non-numerical OY group may be fished above the ABC. However, when a species in the group is biologically stressed, or is expected to be, the Secretary of Commerce (Secretary) may determine that harvest of the group as a whole should be reduced even though some species in the group may not be stressed. This usually has been done by establishing a "harvest guideline" for the group as a whole and setting trip limits to achieve this harvest goal. The harvest guideline may be, but is not necessarily, designated as a quota.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) documented biological stress to widow rockfish in 1982 and to another species, yellowtail rockfish, within the multi-species *Sebastes* complex (all species of rockfish managed under the FMP except Pacific ocean perch, shortbelly and widow rockfish and *Sebastolobus* rockfishes) in 1983. Pacific ocean perch, which is managed under a 20-year rebuilding schedule set forth in the FMP, is considered to be under long-term stress. The Council also acknowledged the increased likelihood of biological stress occurring in sablefish if fishing levels were not reduced. Management regimes were implemented for widow rockfish, Pacific ocean perch, and sablefish, all regulated by quotas in 1985, with the intent of avoiding the closure of these fisheries which would occur if the quota were reached before the end of the year. Limits also were placed on the *Sebastes* complex fishery in an attempt to keep landings close to the harvest guideline.

In its deliberations for 1986 management, the Council considered advice from its Groundfish Management Team (State and Federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), Scientific and Statistical Committee (State, Federal, and university scientists), the concerned public, and an *ad hoc* Task Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Task Group included representatives from the Council, the Groundfish Management Team, and the fishing industry.

At its November 13-14, 1985, meeting in Seattle, Washington, the Council reviewed the latest data and developed management measures intended to limit landings of groundfish in 1986, thereby minimizing the likelihood or intensity of biological stress on groundfish stocks, and reducing the chances of having to close a fishery before the end of the year. In each case, the Council recommended some kind of trip limit. The Council's recommendations for 1986 and actions taken by the Secretary on those recommendations are presented below. Because the vast majority of groundfish landed off Washington,

Oregon, and California is taken from the fishery conservation zone (FCZ), 3 to 200 nautical miles offshore, all groundfish taken and retained or landed in violation of these restrictions will be treated as though they were taken in the FCZ, the same as in 1984 and 1985.

Widow Rockfish

Council Recommendation: The Council recommended a trip limit of 30,000 pounds of widow rockfish, with only one landing above 3,000 pounds per vessel per week. This limit will be applied coastwide and is subject to inseason adjustments so that the OY is not exceeded before the end of 1986.

Rationale: The widow rockfish resource is in better condition than was indicated by previous analyses. The maximum sustainable yield (MSY), an average of the largest catch which can be taken continuously over time without depleting the stock, is estimated at, 9,200 mt (6,880 mt to 11,100 mt) rather than the previous estimate of 5,880 mt. It appears that the stock is close to levels which produce MSY. Evidence of juvenescence still is apparent but it is not clear whether this indicates stress: In 1984, over 60 percent of the widow rockfish landed were less than nine years old, the age at which all fish of this species are mature.

Trip limits have been used to limit landings of widow rockfish since 1982. Even though OY will be 10 percent higher in 1986 than in 1985, it is clear that the rate of landings will need to be restricted in 1986 in order to extend the fishery throughout the year.

In 1985, the year started with a 30,000-pound trip limit and a biweekly option which gave fishermen the choice of landing 60,000 pounds of widow rockfish once every two weeks. However, by choosing the biweekly option, fishermen were able to avoid bad weather and had more likelihood of taking their limit than if they had fished for two weeks under the weekly limit. The biweekly option also favors larger vessels, many of which are involved in joint ventures later in the year. In May, the biweekly option was eliminated in order to slow landings (50 FR 18668, May 2, 1985). Landing rates remained too high, however, and when 90 percent of OY was reached in July, a 3,000-pound trip limit was imposed (50 FR 30195, July 24, 1985) which remained in place the rest of 1985. The OY was not reached in 1985.

In 1986, the year will start with a 30,000-pound weekly trip limit as in 1985, but the biweekly option will not be available early in the year when weather is poor and large vessels are available and capable of fishing. If landings are not curtailed sufficiently, further limits may be imposed later in the year.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces:

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(2) Only one landing above 3,000 pounds of widow rockfish may be made during the week of December 29, 1985–January 4, 1986. It is unlawful to take and retain, possess, or land fish in excess of the 1985 trip limits until the new trip limits are effective on Janaury 1, 1986.

(3) This restriction applies to all widow rockfish taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Sebastes Complex

Council Recommendation: The Council recommended that the harvest guideline for the *Sebastes* complex should equal the sum of the ABCs for those species taken north of Coos Bay, Oregon (43°22′ N. latitude), which equals 10,100 mt. To achieve this, the Council recommended a trip limit of 25,000 pounds on the *Sebastes* complex taken north of Coos Bay (of which no more than 10,000 pounds could be yellowtail rockfish), with only one landing above 3,000 pounds allowed per vessel per week. It also provided fishermen with the option of a biweekly limit which allows landing up to 50,000 pounds in one trip (of which no more than 20,000 pounds could be yellowtail rockfish) in a two-week period, or a twice-weekly limit which allows two landings up to 12,500 pounds each (of which no more than 5,000 pounds could be yellowtail rockfish) in a one-week period, but only if proper notification is made. The Council also recommended maintaining the 40,000-pound trip limit for landings of the *Sebastes* complex caught south of Coos Bay, with no limit on the number of landings allowed per week.

Rationale: The harvest guideline for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon (43°22′ N. latitude) is 10,100 mt, the same in 1986 as in 1985 and 1984 (in spite of slight changes in the management area), and equals the sum of the ABCs of the species in the complex. Yellowtail rockfish, a dominant component in the *Sebastes* complex in the Vancouver and Columbia areas, was documented as biologically stressed in March 1983 (48 FR 8283, February 28, 1983). Trip limits have been imposed since that time in attempts to reduce the harvest of this species which had been landed at rates exceeding the annual ABC estimates for six of the past seven years. Because yellowtail frequently are caught with other species in the multispecies *Sebastes* complex, limits were placed on the complex as a whole. In 1985, weekly trip limits for the *Sebastes* complex in the Vancouver and Columbia areas were adjusted from 30,000 pounds (containing no more than 10,000 pounds of yellowtail rockfish) in January to 15,000 pounds (containing no more than 5,000 pounds of yellowtail rockfish) in May, and to 20,000 pounds (containing no more than 5,000 pounds of yellowtail rockfish) in October. Biweekly and twice weekly landing options were available. Landings of the *Sebastes* complex in 1985 are expected to be below the 10,100 mt harvest guidelines and landings of yellowtail rockfish are expected to be slightly above the 1985 ABC of 2,700 mt for the Vancouver and Columbia areas combined.

The stock biomass of yellowtail rockfish has been declining for the past 19 years although it has stabilized in the past three years. Recent analyses indicate that the stock may not be stressed as previously thought; the Columbia area stock is assumed to be relatively healthy whereas the current biomass in the Vancouver area is at the low end of the estimated range of biomass needed to produce MSY. However, it is clear from historical data that unrestricted landings would exceed ABC significantly, thereby increasing the likelihood of biological stress on yellowtail rockfish. Accordingly, trip limits will be set for 1986 which will be very similar to those in effect in 1985 which kept landings close to the 1986 harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish.

Secretarial Action: The Secretary concurs with the Council's recommendations and herein announces—

(1) Definitions

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* species of rockfish (which includes idiot rockfishes).

(b) "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Sunday and ending 2400 hours Saturday, local time.

(d) All weights are round weights of the whole fish.

(2) General

(a) These restrictions apply to all fish of the *Sebastes* complex taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) It will be presumed that all fish of the *Sebastes* complex which are possessed or landed north of the north jetty at Coos Bay, Oregon (43°22′ N. latitude), hereafter referred to as Coos Bay, were caught north of Coos Bay unless compliance with paragraphs (3) can be demonstrated.

(d) It is unlawful to take and retain, possess, or land fish in excess of the 1985 trip limits until the new trip limits are effective on January 1, 1986.

(3) Restrictions on the Sebastes Complex Caught North of Coos Bay

(a) Weekly trip limit. Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, including no more than 10,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one week period.

Note.—If fishing under the weekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made during the week of December 29, 1985–January 4, 1986.

(b) Biweekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 50,000 pounds of the *Sebastes* complex, including no more than 20,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Coos Bay. Having so notified the appropriate agency, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that two-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the biweekly trip limit and must use only the biweekly trip limit unless rescinded in writing.

Note.—Biweekly trip limit options in effect on December 29, 1985, will continue until modified or terminated under the provisions set forth in this notice.

The State of Oregon or California must receive a written notice declaring intent to use the biweekly limits before the first day of the first two-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the two-week period in which this rescission is to occur. The State of Washington must receive written notice declaring intent to use the biweekly limits postmarked at least seven days before the first day of the first two-week period in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501.

(c) Twice weekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 12,500 pounds of the *Sebastes* complex, including no more than 5,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Coos Bay. Having so notified the appropriate agency, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the twice weekly trip limit and must use only the twice weekly trip limit unless rescinded in writing.

Note.—If fishing under the twice weekly trip limit, only two landings above 3,000 pounds of the *Sebastes* complex may be made during the week of December 29, 1985–January 4, 1986. Twice weekly trip limit options in effect on December 29, 1985, will continue until modified or terminated under the provisions set forth in this notice.

The State of Oregon or California must receive a written notice declaring intent to use the twice weekly limits before the first day of the first one-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the week in which this rescission is to occur. The State of Washington must receive a written notice declaring intent to use the twice-weekly limits postmarked at least seven days before the first day of the first week in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur. Notifications must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(4) Restrictions on the Sebastes Complex Caught South of Coos Bay

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Coos Bay. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip

(a) Unless compliance with this paragraph (5) can be demonstrated, fishing for any groundfish species during a single fishing trip must occur either north or south, but not on both sides, of Coos Bay if more than 3,000 pounds of the *Sebastes* complex is landed from that trip. The vessel owner or operator must notify the State of Oregon of his intent to fish in one area and possess or land in the other, in which case fishing may occur both north and south of Coos Bay. Unless compliance with paragraph (5)(c) can be demonstrated, this notification must be made before leaving port on a fishing trip. If fishing occurs both north and south of Coos Bay during a single fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply.

(b) This notification, submitted by telephone or in writing, should be made to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503-867-4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503-888-5515, between 8:00 a.m. and 4:30 p.m., and other times at 503-269-5000 or 503-269-5999; or 53 Portway Street, Astoria, OR 97103, telephone 503-325-2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip may do so by radio telephone (which must be confirmed in writing immediately on return to port). In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all of the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Pacific Ocean Perch

Council Recommendation: The Council recommended that, as long as more than 1,000 pounds of Pacific ocean perch are on board, the trip limit for that species caught north of Cape Blanco, Oregon (42°50; N. latitude) should be 20 percent (by weight) of all fish on board, or 10,000 pounds, whichever is less. As in 1985, landings of Pacific ocean perch less than 1,000 pounds per trip are unrestricted, regardless of the percentage on board.

Rationale: Pacific ocean perch is managed under a 20-year rebuilding schedule designed to rebuild the stressed stock to levels that will produce the MSY. Pacific ocean perch is considered to be under long-term stress and has been managed by trip limits since the FMP became effective in 1982.

In 1985, the fishery opened in January with a 20 percent (by weight) trip limit. This resulted in high landings and a subsequent restriction in May of 20 percent of 5,000 pounds, whichever is less. Landings for 1985 of Pacific ocean perch are expected to be below the 950-mt OY for the Columbia area and the 600-mt OY in the Vancouver area. The recommended action for 1986 raises the poundage limit to 10,000 pounds but retains the percentage limit at 20 percent in hopes that OY will be achieved in 1986.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces—

(1) For Pacific ocean perch caught north of Cape Blanco, Oregon (42°50' N. latitude), no more than 10,000 pounds or 20 percent (in round weights) of all fish on board, whichever is less, may be taken and retained, or landed, per vessel per fishing trip, with the following exception. Up to 1,000 pounds (round weight) of Pacific ocean perch may be taken and retained, or landed, per vessel per fishing trip, without regard to the 20 percent limitation.

(2) These restrictions apply to all Pacific ocean perch taken and retained in ocean waters (0-200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Sablefish

Council Recommendation: The Council recommended that the 1985 management measures for sablefish should be continued in 1986. Accordingly, in 1986 the trip limit allowing retention of only 5,000 pounds of sablefish smaller than 22 inches applies to all ocean waters north of Point Conception (34°27' N. latitude). As in 1984 and 1985, no size or trip limit for sablefish is imposed south of Point Conception.

Rationale: A 5,000-pound trip limit on sablefish smaller than 22 inches has been imposed since 1983 to reduce the likelihood of biological stress which is expected if landings of juvenile sablefish are not curtailed. The Council decided that there were compelling reasons to continue the size and trip limits in 1986. These reasons include the presence of a strong year class of small fish, the higher price per pound of larger fish, and the prudence of minimizing landings of juvenile fish which become the future brood stock.

Secretarial Action: The Secretary concurs with the Council's recommendation and hereby announces:

(1) No more than 5,000 pounds (round weight) of sablefish smaller than 22 inches (total length) may be taken and retained, or landed, per vessel per fishing trip in the area north of Point Conception, California (34°27' N. latitude) to the U.S.-Canada border.

(2) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(3) For sablefish which have been "headed," the minimum size limit is 16 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(4) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(5) The above restrictions apply to all sablefish taken and retained in ocean waters (0-200 nautical miles) offshore of, or landed in, Washington, Oregon, and California north of Point Conception.

Inseason Adjustments

At its April 1986 meeting, the Council will review the data available through March 1986, and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

These limits for sablefish, widow rockfish, Pacific ocean perch and the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. If unrestricted, landings unquestionably will result in several ABCs being

exceeded in 1986. Prompt action to limit those fishing rates is necessary to protect the widow rockfish, *Sebastes* complex, Pacific ocean perch, and sablefish stocks and alleviate the necessity for fishery closures before the end of 1986. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions are taken in final form effective January 1, 1986.

The public has had opportunity to comment on these management measures. The public participated in the Task Force, Groundfish Management Team, Groundfish Advisory Subpanel, and Council meetings in October and November 1985 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries.

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

Dated: December 26, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-30894 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 251
Tuesday, December 31, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowance and Post Differential—Nonforeign Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking; notice of extension of public comment period.

SUMMARY: OPM is extending for sixty days the public comment period for responding to the proposed regulations covering the nonforeign area cost-of-living allowance and the post differential. The proposed regulations were published at 50 FR 42531 on October 21, 1985. The original expiration date of the comment period was December 20, 1985. One commenter requested extension of the comment period until March 1, 1986, to provide additional opportunity for analysis and comment. The public comment period is now extended to February 21, 1986.

DATES: The comment period is extended from December 20, 1985, to February 21, 1986.

ADDRESS: Send or deliver written comments to U.S. Office of Personnel Management, Compensation Group, Allowances and Special Rates Division, Room 3353, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barry E. Shapiro, (202) 632-7471.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 85-30897 Filed 12-30-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 84-118]

Interstate Movement of Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the requirement that an owner-shipper statement or other document containing specified information accompany certain cattle during interstate movement.

It is proposed to delete the requirement that cattle be accompanied by such an owner-shipper statement or other document when moved interstate if the following conditions are met: If the cattle are moved interstate to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under 9 CFR 78.25(b); if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement. This action appears to be warranted. The information on the owner-shipper statement or other document, in combination with the individual identification on the animal, is intended to allow an animal found to be infected with a disease to be traced back through marketing channels, and thereby help identify the source of the disease and other animals affected with or exposed to the disease. It appears that the proposed changes would not lessen the ability to accomplish these purposes.

Further, for those movements of cattle for which an owner-shipper statement or other document would still be required, it is proposed to require additional information on the owner-shipper statement or other document. It appears that the additional information would be helpful in determining the source and extent of spread of a disease in the event of a disease outbreak.

DATE: Written comments must be received on or before March 3, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 84-118. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.E. Wagner, Chief Staff Veterinarian, Interstate Inspection and Compliance, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8684.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 71 (referred to below as the regulations) contain general provisions concerning the interstate transportation of animals and animal products. The regulations are designed to help prevent the interstate spread of communicable diseases of livestock and poultry.

Under § 71.18 of the regulations, as a condition of interstate movement, certain cattle two years of age or older must meet specified requirements concerning individual identification, and must be accompanied by a statement signed by the owner or shipper of the cattle, or other document [1] stating: (a) The point from which the animals are moved interstate; (b) the destination of the animals; (c) the number of animals covered by the statement, or other document; and (d) the name and address of the owner or shipper. Under specified circumstances, it is required that the owner-shipper statement or other document also state the identifying numbers of backtages, eartags, or other approved identification applied.

The information on the owner-shipper statement or other document, in combination with the individual identification on the animal, is intended to allow an animal found to be infected with a disease to be traced back through marketing channels and thereby help identify the source of the disease and other animals affected with or exposed to the disease.

[1] Other document means a shipping permit, an official health certificate, an official brand inspection certificate, a bill of lading, a waybill, or an invoice on which is listed the required information.

Deletion of Requirement for Owner-Shipper Statement or Other Document for Certain Movements

Records generated as a result of requirements that certain cattle be accompanied by an owner-shipper statement or other document are often the only feasible means of tracing such cattle from a destination back to previous places where the cattle have been. However, it appears that under certain limited circumstances it is not necessary to require that cattle be accompanied by an owner-shipper statement or other document. In this connection, it is proposed to amend § 71.18 of the regulations by deleting the requirement that cattle be accompanied by such an owner-shipper statement or other document if the following conditions are met: If the cattle are moved interstate to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under 9 CFR 78.25(b); if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement.

The proposal to delete the requirement that such cattle be required to be accompanied by an owner-shipper statement or other document appears to be warranted. Records kept in the ordinary course of business at such slaughtering establishments and stockyards would be adequate to identify the farm or other premises from which the cattle were moved. Further, if cattle with a communicable disease have been moved directly from a farm or other permises where they have been kept for not less than four months prior to the date of movement and which have not had on the premises cattle or bison from any other premises within four months prior to the date of movement, such premises are likely to be the primary foci of infection for cattle moved from the primises that are later found to be diseased. Under the circumstances described above, it is likely that an animal found to be infected with a communicable disease would have contracted the disease and have exposed other animals to the disease at the farm or other premises where it has been for the previous four month period. Accordingly, traceback to such premises would likely be adequate, to identify the source of the disease and other animals affected with or exposed to the disease.

Under the proposal, cattle would not be exempt from the requirements concerning the owner-shipper statement or other document if the cattle are moved from a farm or other premises where they have been kept for less than four months prior to the date of movement; or if such farm or other premises have had on the premises cattle or bison from any other premises within four months prior to the date of movement. An interstate movement of such cattle would likely contain cattle that in the previous four months had either been on several different premises or had been mingled with cattle or bison from several different premises. Without the requirement for an owner-shipper statement, the point from which such cattle were moved interstate may not be adequately identified by records kept at such slaughtering establishments or stockyards, thus making it difficult to trace diseased animals back to their herds of origin. Also, even if diseased cattle can be traced back to the point from which the cattle were moved interstate to the slaughtering establishment or stockyards, it is likely that further traceback would be necessary to locate the primary source of the disease. Experience has indicated that in a subsequent traceback of diseased cattle there is often difficulty in securing the name and address of the last previous owner from the owners or shippers who moved the cattle interstate.

The proposed provisions concerning animals from other premises relate only to cattle or bison. It is unlikely that facilities on such premises used for cattle or bison would be used for other animals.

Information on Owner-Shipper Statement or Other Document

Further, for those movements of cattle for which an owner-shipper statement or other document would still be required, this document proposes to change the provisions concerning the information that must be included on an owner-shipper statement or other document. As noted above, § 71.18 currently requires that the owner-shipper statement, or other document, include the name and address of the owner or shipper. It is proposed to require that the owner-shipper statement or other document include both the name and address of the owner at the time of movement and the name and address of the shipper, in addition to the other information currently required to be included. It is further proposed to require that the owner-shipper statement or other document include the name and address of the last previous owner if ownership changed within four months prior to movement.

It appears that this additional information would be available to the owner or shipper at the time of the interstate movement of the animal. Further, in the event of disease outbreak, this information would be helpful to State and Federal officals trying to trace movements, if any, of cattle and thereby determine the source and extent of spread of a disease.

It is not proposed to require that the owner-shipper statement or other document include the name and address of any owners prior to the last previous owner. It appears that such a requirement would be impracticable, since in most instances the information would not be readily available.

Further, it is not proposed to require the name and address of the last previous owner if ownership has not changed within the four month period prior to the interstate movement of the animal. Based on Departmental experience (including consideration of incubation periods for communicable diseases), it would be likely that cattle found to be infected with a communicable disease would have contracted the disease within the four month period prior to movement.

Miscellaneous

Also, certain nonsubstantive changes would be made for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

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

It is not anticipated that this action would have any significant effect on the

number of cattle moved interstate within the United States or on the cost of moving such animals interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

PART 71—GENERAL PROVISIONS

Accordingly, it is proposed to amend 9 CFR Part 71 as follows:

1. The authority citation for Part 71 would be revised to read as set forth below and the authority citations following all the sections in Part 71 would be removed:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17 2.51, and 371.2(d).

§ 71.18 [Amended]

2. In § 71.18 footnote number 1 would be revised to read as follows:

[1] Department approved backtags are available at slaughtering establishments operating under Federal or State inspection, at stockyards specifically approved under § 78.25(b) of this chapter, and from State representatives and Veterinary Services representatives as defined in § 78.1 of this chapter. Information with respect to slaughtering establishments operating under Federal inspection and stockyards specifically approved may be obtained as indicated in §§ 78.24 and 78.25 of this chapter.

3. In paragraph (a)(1)(i) of § 71.18 "except as provided in paragraph (a)(5) of this section," would be added after "and if".

4. In paragraph (a)(1)(i) of § 71.18 "(e)" would be changed to "(g)" and "(d) the name and address of the owner or shipper, and" would be changed to "(d) the name and address of the owner at the time of movement; (e) the name and address of the previous owner if ownership changed within four months prior to the movement of the cattle; (f) the name and address of the shipper; and".

5. In paragraph (a)(1)(i) of § 71.18 "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter;" would be changed to "slaughtering establishment operating under Federal or State inspection;"

6. In paragraph (a)(1)(ii) of § 71.18 "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter;" would be changed to "slaughtering establishment operating under Federal or State inspection;"

7. In paragraph (a)(1)(ii) or § 71.18 "subdivision (i), and when moved interstate," would be changed to "paragraph (a)(1)(i) of this section and, except as provided in paragraph (a)(5) of this section, when moved interstate,".

8. In paragraph (a)(1)(ii) of § 71.18 "(d) the name and address of the owner or shipper:" would be changed to "(d) the name and address of the owner at the time of movement; (e) the name and address of the previous owner if ownership changed within four months prior to the movement of the cattle; and (f) the name and address of the shipper:".

9. In paragraph (a)(1)(ii) of § 71.18 "federally inspected or specifically approved slaughtering establishment" would be changed to "slaughtering establishment operating under Federal or State inspection" each time it appears.

10. In paragraph (a)(1)(iii) of § 71.18 "(e) the name and address of the owner or shipper:" would be changed to "(e) the name and address of the owner at the time of movement; (f) the name and address of the previous owner if ownership changed within four months prior to the movement of the cattle; and (g) the name and address of the shipper:".

11. In paragraph (a)(1)(iii) of § 71.18, "and are accompanied" would be changed to "and, except as provided in paragraph (a)(5) of this section, are accompanied".

12. In § 71.18, a new paragraph (a)(5) would be added to read as follows:

§ 71.18 Individual identification of certain cattle 2 years of age or over for interstate movement.

(a) * * *

(5) Cattle that would otherwise be required to be accompanied by an owner-shipper statement or other document as a condition of interstate movement under paragraph (a)(1) of this section, shall not be required to be accompanied by such an owner-shipper statement or other document if the following conditions are met: if the cattle are moved to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under § 78.25(b) of this chapter; if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement.

Done at Washington, DC, this 24th day of December 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–30856 Filed 12–30–85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 85-073]

Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle because of brucellosis. It is proposed to amend the regulations to provide that as a condition of attaining and maintaining status for a State or Area as Class Free, Class A, Class B, and Class C, such States or Areas must meet certain conditions concerning individual herd plans. It is further proposed to amend the criteria for designating States or Areas as quarantined. In addition, it is proposed to quarantine the State of

Oklahoma. It appears that these actions are necessary in order to help prevent the interstate spread of brucellosis.

DATE: Written comments must be received on or before March, 3, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 85-073. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 pm., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) regulate the interstate movement of certain animals because of brucellosis, a contagious disease of cattle, other bovine, and swine. The regulations provides a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine Restrictions on the interstate movement of cattle are generally more stringent for movements from Class A States or Areas compared to movements from Class Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The most stringent restictions are on the interstate movement of cattle from quarantined States or Areas. This document proposes to amend the criteria for classifying States as Class Free, Class A, Class B, and Class C, and further proposed to designate Oklahoma as a quarantined State.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, and (4) minimum procedural standards for administering the program.

Approved Individual Herd Plans

The basic standards referred to above include provisions concerning approved individual herd plans (also referred to in the regulations as approved action plans). This docket proposes to amend the criteria for classifying States as Class Free, Class A, Class B, and Class C by making changes concerning approved individual herd plans.

An approved individual herd plan is defined in § 78.1(xx) of the regulations as:

(xx) *Approved action plan or approved individual herd plan.* (1) A herd management and testing plan which is designed by the herd owner, his veterinarian if so requested, and a veterinarian of the Cooperative Brucellosis Eradication Program to control and eventually eradicate brucellosis from an affected herd. Plans must be approved jointly by the State animal health official and the Veterinarian in Charge. A similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd is also within the meaning of the term "Individual Herd Plan" or "Approved Action Plan."

(2) The plan must call for the most appropriate veterinary procedures and proven herd management procedures to control the spread of brucellosis within the herd and thereby eradicate the disease from the herd.

The regulations provide that as a condition for attaining and maintaining Class Free or Class A status, all herds that are adjacent to reactor herds and all herds having contact with cattle in reactor herds must have approved individual herd plans for testing or monitoring the herd in effect within 15 days of notification of infection in the reactor herd. The regulations contain a similar condition for attaining and maintaining Class B and Class C status, with a 45 day time limit.

The regulations further provide that, as a condition for attaining and maintaining Class Free and Class A status, all herds from which cattle are sold into an infected herd and all herds which have received cattle from an infected herd must have approved individual herd plans for testing or monitoring the herd in effect within 15 days of locating the source herd(s) or recipient herd(s). The regulations contain a similar condition for attaining and maintaining Class B and Class C status, with a 45 day time limit.

Although the standards for attaining and maintaining Class Free, Class A, Class B, and Class C status contain certain requirements for testing and monitoring herds with reactor cattle, the regulations contain no requirements for approved individual herd plans for herds with reactor cattle.

A herd in which any animal has been classified as a brucellosis reactor would be placed under a State or Federal quarantine because of a risk of the herd causing the spread of brucellosis. Any herd in which any animal has been classified as a brucellosis reactor, and which has not been released from quarantine is defined in § 78.1(aaa) of the regulations as a "herd known to be affected." Even if all the known reactors in a herd known to be affected had been removed, the herd would remain quarantined during the time that there is a significant risk of animals in the herd harboring brucellosis in the incubation stage. It appears necessary to require approved individual herd plans for herds known to be affected in order to help reduce and then eliminate brucellosis within the herd, to prevent spread to other herds, and to prevent reintroduction of brucellosis in a given herd after the herd has become free of the disease.

Further, it appears that any State, regardless of any previous classification that does not have in place approved individual herd plans for herds known to be affected would not have sufficient control and eradication procedures adequate to prevent the spread of brucellosis to adjacent herds and from adjacent herds to other herds throughout a given State. Under these circumstances, it appears that failure to have such approved individual herd plans in place for herds known to be affected should be a basis for lowering a State's status.

Therefore, it is proposed to amend the regulations to provide that as a condition of attaining and maintaining Class Free and Class A status, all herds known to be affected must have approved individual herd plans for testing or monitoring the herd in effect within 15 days of notification by State or Veterinary Services representatives of reactors in the herd. Further, it is proposed to amend the regulations to provide that as a condition of attaining and maintaining Class B and Class C status, all herds known to be affected must have approved individual herd plans for testing and montoring the herd in effect within 45 days of notification by State or Veterinary Services

representatives of reactors in the herd. The proposed time limits of 15 and 45 days, respectively, correspond with the current time limits for having in effect approved individual herd plans for other types of herds, as specified above.

Although the current regulations provide for individual herd plans for certain types of herds, they do not contain provisions specifying that the provisions of the individual herd plans must be complied with in order to attain or maintain a particular status. It intended with respect to the current and proposed provisions relating to individual herd plans that as a condition of attaining and maintaining a particular status, each State must ensure that such herd plans are effectively complied with as determined by the Deputy Administrator, Veterinary Services. This document proposes to include language for the current and proposed provisions concerning individual herd plans to accomplish this purpose. Without effective compliance, individual herd plans would not accomplish their purpose.

Criteria for Quarantining States or Areas

This document also proposes to amend the criteria for quarantining States or Areas. Section 78.22 of the regulations provide for quarantining areas because of:

> . . . the existence of the contagion of brucellosis and the nature and extent of such contagion in certain areas which do not have control and eradication procedures adequate to prevent the interstate dissemination of the disease.

It is proposed to revise § 78.22 to provide that a State or Area that does not meet the criteria for Class Free, Class A, Class B, or Class C shall be designated as a quarantined State or Area. Within the framework of the system for classifying States, it was intended that a State or Area that does not meet the criteria for Class C or higher be designated as quarantined, regardless of whether any other criteria are met. It appears that cattle moved interstate from a State not eligible for Class C status or higher would present a significant risk of spreading brucellosis unless moved in accordance with the provisions set forth in § 78.12a for moving cattle from quarantined areas.

Proposed Quarantine of Oklahoma

There are a number of herds of cattle in southeastern Oklahoma which have a high incidence of brucellosis. These herds are currently under a State quarantine because of brucellosis. However, these herds present a risk of causing the spead of brucellosis to adjacent herds and from the adjacent herds to herds throughout Oklahoma. Owners of some herds either have not agreed to an individual herd plan for the elimination of brucellosis from their herds, or have agreed to individual herd plans but have not followed the part of the individual herd plans providing for regular testing of their herds and removal of reactors. Therefore, it appears that it is necessary to designate the entire State of Oklahoma as a quarantined State in order to help prevent the interstate dissemination of brucellosis.

Accordingly, it is proposed to amend § 78.22 of the regulations by designating the entire State of Oklahoma as a quarantined State. If the proposal to quarantine Oklahoma becomes effective, movements of cattle from Oklahoma would be subject to the provisions applicable to movements of cattle from quarantined States or Areas set forth in § 78.12a.

Procedures for Downgrading

As noted above, the regulations provide for classifying States or Areas as Class Free, Class A, Class B, Class C, or quarantined. It is proposed to amend the regulations concerning the downgrading of States or Areas. The regulations in § 78.25 provide, among other things, that:

> In the case of any reclassification to a lower class, the State animal health official of the State involved will be notified of such downgrading and shall be given an opportunity to request an administrative review and to present his objections and arguments to the Deputy Administrator prior to the downgrading taking effect.

Similar but less detailed procedural provisions for downgrading States or Areas, including downgrading States or Areas to quarantined status, are set forth in other places in the regulations (see 9 CFR 78.1 (t), (u), (v), and (w)). It is proposed to delete the less detailed procedural provisions. For purposes of clarity it appears that the procedural provisions should be set forth in full in one place in the regulations. It is also proposed to amend the provisions of § 78.25 quoted above to specify that such procedures also apply to downgrading States or Areas to quarantined status. It was intended that the procedural provisions apply to downgrading States or Areas to quarantined status.

Proposal of September 12, 1985

It should be noted that a document published in the **Federal Register** on September 12, 1985 (50 FR 37201–37229), proposed to make numerous changes in the regulations, including nonsubstantive changes in the provisions refered to above concerning approved individual herd plans, criteria for quarantining States or areas, and procedures for downgrading. It is not necessary to discuss provisions of the proposal of September 12, 1985, to make determinations concerning the issues raised by this document. However, if the provisions of the proposal of September 12 are adopted as a final rule, the concepts discussed in this document could be readily incorporated into the provisions set forth in the proposal of September 12.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0064.

Executive Order 12291 and Regulatory Flexibility Act

This proposed action had been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is not anticipated that the proposed changes concerning approved individual herd plans would have a significant effect on affected persons.

As noted above, it is proposed to quarantine the State of Oklahoma. Records concerning the movement, testing, and slaughter of cattle indicate that most of the cattle sold at markets in Oklahoma remain in Oklahoma. Cattle moved interstate from Oklahoma are moved for feeding, for slaughter, or for use as breeding stock. Approximately two million cattle move interstate from Oklahoma annually. Approximately half of these cattle are steers and, consequently, would not be subject to additional restrictions if Oklahoma is quarantined. Other cattle moved interstate would be subject to additional testing. However, it is not anticipated that the additional testing would significantly increase the cost of

marketing cattle. Further, it is not anticipated that there would be a significant change in the number of cattle moved interstate from Oklahoma if Oklahoma is quarantined.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, it is proposed to amend 9 CFR Part 78 as follows:

1. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

2. In the introductory text of paragraphs (t), (u), (v), and (w) of § 78.1, the second sentence would be removed.

3. In paragraphs (t)(1)(iii) (A) and (B); (u)(1)(iii) (A) and (B); (v)(1)(iii) (A) and (B); and (w)(1)(iii) (A) and (B) of § 78.1, a sentence would be added at the end of each paragraph to read: "Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator."

4. In § 78.1, new paragraphs (t)(2)(iii), (u)(2)(iii), (v)(2)(iii), and (w)(2)(iii) would be added to read as follows:

§ 78.1 Definitions.

* * * * *

(t) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 15 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

(u) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 15 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

(v) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 45 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

(w) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 45 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

5. Section 78.22 would be revised to read as follows:

§ 78.22 Quarantined States or Areas.

The following States or Areas do not meet the criteria for classification as Class Free, Class A, Class B, or Class C, and are therefore designated as quarantined.

The entire State of Oklahoma.

6. In paragraph (a) of § 78.25, the second sentence is revised to read:

§ 78.25 Designations of States/Areas and approved stockyards.

(a) * * * In the case of any reclassification to a lower class or reclassification as a quarantined State or Area, the State animal health official of the State involved will be notified of such reclassification, and shall be given an opportunity to present objections and arguments to the Deputy Administrator prior to the reclassification taking effect.

Done at Washington, DC, this 24 day of December 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–30857 Filed 12–30–85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM-40-25]

State of Alabama; Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment a notice of receipt of a petition for rulemaking submitted by the State of Alabama. The petition requests that the NRC amend its regulations governing unimportant quantities of source material. The petitioner suggests that the NRC examine the exemption from licensing requirements for products or parts fabricated of or containing tungsten or magnesium-thorium alloys whose thorium content is less than 4 percent by weight and either remove the restriction on this exemption or set out the restriction as part of a general license. The petitioner requests this action so that a person who obtains an exempt product covered by the exemption would be aware of limitations placed on its use.

DATE: Submit comments by March 3, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Correspondence and Records Branch.

For a copy of the petition write: Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Inspect and copy the petition or comments received on the petition at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, Telephone: (301) 492-7086 or Toll Free (800) 368-5642..

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has received a petition for rulemaking from the State of Alabama. This petition for rulemaking has been assigned Docket No. PRM-40-25. The petitioner requests that the NRC amend its regulations governing unimportant quantities of source a material.

Section 40.13(c)(4) sets out an exemption from licensing requirements for any person who receives, possesses, uses, or transfers a product or part fabricated of, or containing tungsten or magnesium-thorium, alloys if the thorium content of the alloy does not exceed four percent by weight. This provision also restricts the exemption by not authorizing the chemical, physical, or metallurgical treatment or processing of the exempt product.

The petitioner believes that in placing a restriction on an exemption, the NRC has created a structurally deficient regulation that may lead to unintentional violations by persons who may receive products covered by the exemption and be unaware of any further regulatory restriction. The petitioner identified a situation where materials were distributed under this exemption in scrap metals which were melted and cut by an oxyacetylne torch.

To remedy this situation, the petitioner suggests that a safety evaluation be performed to determine whether or not this restriction is necessary. If the safety evaluation does not indicate that the restriction is needed, the petitioner believes it should be removed. However, if the restriction is needed, for the use of four percent magnesium-thorium alloys, it should not be present as part of an exemption, but should be included under a general license.

The petitioner believes the appropriate course of action is to place these products in the general license provisions of 10 CFR 40.25 and suggests the following amendments to the regulations to accomplish this action.

1. In § 40.25, add a new paragraph (f) to read as follows:

Section 40.25 General license for use of certain industrial products or devices.

* * * * *

(f) A general license is hereby issued to receive, acquire, possess, and us any finished product or part fabricated of, or containing tungsten or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the general license contained in this paragraph (f) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such product or part. Any general licensee is authorized to transfer such product or part to another general licensee only:

(1) When the product or part remains in use at the same location, or

(2) Where the product or part is held in storage in the original shipping container at its intended location of use prior to the initial use by a general licensee.

2. In § 40.34, paragraph (d) is added to read as follows:

Section 40.34 Special requirements for the issuance of a specific license.

* * * * *

(d) An application for a specific license to manufacture or initially transfer the products or parts containing not more than 4 percent thorium to persons generally licensed under § 40.25(f) of this Chapter or equivalent regulations of an Agreement State will be approved if:

(1) The applicant has satisfied the general requirements of § 40.32 of this Chapter;

(2) The applicant submits sufficient information relating to the manufacture, quality control, labels, proposed uses and potential hazards of the product or part to provide reasonable assurance that:

(i) Under ordinary condition of handling, storage, and use the product or part the thorium contained in the product or part will not be released or inadvertently removed from the product or part and it is unlikely that any person will receive in any period of one calendar quarter a dose in excess of 10 percent of the limits specified in the table in § 20.101(a) of this Chapter or if the exposure may be to radioactive materials in air in excess of 10 percent of the limits specified in § 20.103(a) this Chapter; and,

(ii) Under accident condition such as fire and/or explosion associated with the handling, storage, and use of the product or part, it is unlikely that a person would receive an external radiation dose or an internal dose commitment in excess of the dose to the appropriate organ as specified in column IV of the Table in § 32.24 of this Chapter.

(3) Each product or part bears or has an accompanying label or instructions approved by the Commission which contain in a clearly identified and separate statement instructions and precautions necessary to assure safe installation, operation, servicing, and disposal of the product or part;

(4) Each person licensed under this section shall furnish a copy of the general license contained in § 40.25(f) or an Agreement State's regulation equivalent to § 40.25(f) to each person to whom he directly or through an intermediate person transfers thorium in a product or part. Further, each person licensed under this section shall report the transfer of such product or parts in the manner required for generally licensed devices pursuant to § 32.52 of this Chapter.

The NRC invites public comment on PRM-40-25. Those who intend to submit comments on the petition may obtain a copy of the petition from the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Washington, DC, this 26 day of December 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-30912 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 85-1196]

Over-the-Counter Financial Options Trading; Accounting for Financial Options

December 20, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations pertaining to financial options transactions by institutions whose accounts are insured by the FSLIC ("insured institutions"). The Board is proposing to allow insured institutions to engage in over-the-counter ("OTC") financial options transactions with certain types of counterparties in addition to primary dealers in government securities, which presently are the only entitles with which an insured institution may trade OTC options. The Board believes that federally regulated banks and savings institutions, securities brokers that are registered with the Securities and Exchange Commission ("SEC") and are members of the National Association of Securities Dealers, ("NASD") as well as

futures commission merchants registered with the Commodity Futures Trading Commission ("CFTC"), may be subject to capital adequacy standards and regulatory oversight that is sufficiently comparable to the standards applicable to primary dealers that such other entities would also be permissible counterparties in OTC options transactions. The proposed amendments are intended to allow insured institutions to use more effectively the authority previously granted to them to trade OTC options.

The Board also is proposing to revise the manner in which insured institutions account for "short call" options positions. Under the existing regulations, an institution that enters into a short call option matched against a specific asset, liability, or intended cash-market transaction, may defer any realized losses on the options position over the estimated life of the matched item and recognize the option commitment fee as income over the term of the option. The Board believes that the present accounting rules may encourage insured institutions to enter into short call positions solely to take advantage of the favorable accounting treatment, rather than for sound economic reasons. To eliminate that incentive, the Board is proposing to require that the commitment fee received by an institution writing a call option be deferred until the option position is terminated. At that time, any gains or losses resulting from the options position shall be recognized, together with the fee income that had previously been deferred.

DATE: Comments must be received by March 3, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available f or public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Robert J. Pomeranz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377-6209; M. Christian Mitchell, Accounting Fellow, Office of Examinations and Supervision, (202) 377-6837; or neil Crowley, Attorney, Office of General Counsel, (202) 377-6451; Federal Homle Loan Band Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 11, 1982, the Board, as operating head of the FSLIC, adopted regulations governing the extent to which an institution the accounts of which are insured by the FSLIC may trade financial options. Board Resolution No. 82-557, 47 FR 36621 (Aug. 23, 1982). Those regulations permitted an institution to engage in financial options transactions by using any financial options contracts designated by the CFTC or approved by the SEC, and based upon a financial instrument in which the insured institution may invest, or based upon a financial futures contract. Such transactions further were required to be conducted under the terms and conditions established by an exchange designated or regulated by the CFTC or the SEC. *See* 12 CFR 563.17-5 (1983). Thus, under the terms of that regulation insured institutions were not permitted to engage in OTC financial options transactions because such transactions do not involve standardized contracts and are not considered to be part of an exchange. *See* Office of Examinations and Supervision, Memorandum No. T74, Prohibition Against Over-the-Counter Options Trading (Feb. 14, 1985).

As a separate part of that regulation, the Board also established certain accounting rules to be used by insured institutions engaging in financial options transactions. The Board reasoned that the establishment of such rules was necessary because at that time there was no single accounting treatment for financial options transactions recognized by the accounting profession. The rules adopted by the Board required insured institutions to use hedge accounting in recognizing gains or losses on long and short call, and long put options positions that were properly matched against cash or forward market positions. Unmatched long and short call positions, unmatched long put positions, and any short put position were required to be accounted for on a marked-to-market basis. When using hedge accounting, an institution would treat the gain or loss from an option position as an adjustment to the carrying amount of the cash or forward market position against which the option was matched. In order to use hedge accounting, the Board's rules required that an institution match its options position against cash or forward market positions, and that the options transactions reduce the interest-rate risks of the corresponding transactions. The rules further required that an institution divide the option premium paid or recieved into two parts: an option commitment fee and the immediate exercise value of the option. The commitment fee was to be recognized as an expense or revenue item over the term of the option, and the change in immediate exercise value was to be treated as gain or loss subject to hedge accounting treatment.

On April 18, 1985, the Board amended 12 CFR 563.17-5 with regard to permissible types of financial options transactions and the accounting rules applicable to short call options positions, and also requested public comment on the amendments, which were adopted in final form. Board Resolution No. 85-293, 50 FR 16459 (April 26, 1985). As part of those amendments, the Board permitted insured institutions to engage in all types of OTC options transactions (*i.e.*, long calls, long puts, short calls, and short puts), but limited the permissible counterparties in an OTC transaction to entities that were "primary dealers" in government securities (*i.e.*, members of the Association of Primary Dealers in United States Government Securities). The Board adopted the limitation on permissible counterparties as a means of minimizing the potential credit and liquidity risks to which an insured institution trading in OTC financial options could be exposed. *See id.* Because primary dealers are actively engaged in the distribution of government securities, are substantially capitalized, make continuous markets in government securities, have a long-term commitment to the market, are capable of maintaining a market in OTC options contracts, and are monitored by the Federal Reserve Bank of New York, the Board reasoned that permitting primary dealers to act as counterparties in OTC financial options transactions would not involve any substantial credit risk to insured institutions. Moreover, such a limitation made it unnecessary for the Board to monitor the capital adequacy of all potential counterparties with which an institution could trade OTC options. The Board also allowed insured institutions to conduct OTC options trading with affiliates of a primary dealer, provided, however, that the affiliate was substantially engaged in dealing in government securities and its performance under an OTC options contract was guaranteed by the primary dealer.

In those amendments, the Board also revised its accounting rules for short call options transactions in order to eliminate the potential for certain abusive practices that were possible under the initial accounting rules adopted in 1982. Under the prior rules, an institution receiving a fee for writing a short call option would recognize the option commitment fee as income over the term of the option. If the option were matched against a specific asset, liability, or intended cash market position, any realized gains or losses on the option position would be deferred

over the estimated life of the matched item. The Board expressed its belief at that time that such accounting treatment could lead an institution to enter into short call options transactions that are not economically sound in order to record the option commitment fee as current income. In order to deter insured institutions from entering into short call options positions solely for the benefit derived from a favorable accounting rule, the Board amended 12 CFR 563.17-5(g) to require that option commitment fees received for the sale of matched short call options be recorded as a discount on the matched item. That fee, as well as any related losses from the options transactions, would be deferred and amortized over the estimated life of the matched item.

On May 24, 1985, the Board rescinded the accounting portion of the amendments that had been adopted on April 18, 1985, and reinstated the initial accounting rules in order to give further consideration to the most appropriate method of accounting for short call options. Board Resolutions No. 85-420, 50 FR 23395 (June 4, 1985). On the same date, the Board separately issued an advance notice of proposed rulemaking, which requested public comment on all of the related accountancy aspects of short call options transactions in which insured institutions may engage. Board Resolution No. 85-421, 50 FR 23432 (June 4, 1985). After considering the comments received in response to the advance notice and the solicitation of comments made in conjunction with the April 18, 1985 amendments, the Board is now proposing to amend 12 CFR 563.17-5 with regard to the permissible counterparties for OTC options transactions and the accounting rules for short call options, as described below.

Permissible Counterparties

As discussed previously, the limitation of permissible counterparties to primary dealers was incorporated into the current regulations in order to minimize the credit and liquidity risks that may be associated with trading OTC financial options. After reviewing the comments received on this matter, however, the Board now believes that the present regulations may be unnecessarily restrictive and that there may be other entities that are sufficiently well capitalized and regulated to be capable of acting as counterparties in OTC options transactions without exposing the insured institutions to appreciable credit risk. In addition, the Board is concerned that the present regulations may have the unintended effect of denying smaller insured institutions access to the OTC option market. Because of their small asset size, such institutions generally do not need to take substantial positions in the OTC financial options market in order effectively to manage their portfolios. In many cases, however, the options transactions that such institutions may desire to make are smaller than the minimum amount required by primary dealers that trade OTC options. Thus, such an institution may effectively be precluded by the primary dealer restriction from utilizing OTC options as a financial tool, which is contrary to the intent of the Board in allowing insured institutions to trade OTC options. Moreover, because there are only 36 primary dealers, the Board also is concerned that the present counterparty restriction could prove to be anti-competitive by prohibiting other well-capitalized entities from dealing with insured institutions and by making the prices of OTC options transactions less competitive than in an open marketplace.

The comments received by the Board indicate that there are a variety of entities other than primary dealers that trade OTC options and whose operations are subject to capital adequacy standards, regulation and inspection by governmental and/or self-regulatory agencies. Banks and thrift institutions that are subject to regulation by the Comptroller of Currency ("OCC"), Federal Reserve Board ("FRB"), Federal Deposit Insurance Corporation ("FDIC"), or FSLIC must observe capital requirements, submit periodic reports on their financial condition, subject themselves to examinations and audits, and restrict their activities to those permitted by statute and the regulations of the particular agency. Similarly, broker-dealers that are registered with the SEC are subject to financial responsibility, recordkeeping, reporting, capital maintenance and other regulatory requirements. NASD members must monitor and maintain the adequacy of their capital and are subject to NASD-conducted audits to test compliance with the above standards. In addition, such dealers are subject ot enforcement by the NASD of ethical standards for the conduct of the securities business and of the applicable federal securities laws and regulations. Similar types of standards are applied to futures commission merchants subject to the jurisdiction of the CFTC. The Board believes that the above types of regulated entities are subject to capital adequacy standards, regulation and inspection such that they also should be considered as permissible counterparties for insured institutions engaging in OTC option transactions. Accordingly, the Board is proposing to amend 12 CFR 563.17-5 by allowing insured institution to engage in OTC options transactions with the following additional types of entities:

—Banks that are subject to regulation and supervision by the OCC, the FDIC, or FRB and are in compliance with their applicable regulatory capital or net worth requirement.

—Institutions that are subject to regulation and supervision by the FSLIC and are compliance with their regulatory net worth requirement.

—Brokers registered with the SEC and subject to regulation and supervision by the NASD and that are in compliance with their capital requirements.

—Futures commission merchants registered with the CFTC and that are in compliance with their capital requirements.

—The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.

—Other entities, upon application, that the FSLIC determines are adequately regulated by a governmental entity or a self-regulatory agency, are subject to capital adequacy standards, and are regularly audited and examined.

The Board requests public comment on whether the types of institutions described in the above categories would be appropriate counterparties for insured institutions and whether there exist any additional entities whose capital adequacy, stability, and regulatory supervision are such that they also should be included in the category of entities permitted to act as counterparties in OTC options transactions. Without intending to limit comment regarding the types of additional potential counterparties, the Board specifically requests whether insured institutions should be permitted to engage in OTC transactions with the Federal Home Loan Banks, or with other types of unregulated entities, *e.g.* unregulated securities dealers, if the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital guidelines and follows certain procedures to verify such compliance to the insured institution. The Board also requests comment or whether it should require that depository institutions that act as counterparties be in compliance with their regulatory capital or net worth

requirements as a condition of acting as a counterparty to an insured institution.

As a separate but related matter, the Board wishes to take this opportunity to articulate an interim treatment of insured institutions that wish to enter into OTC options transactions with entities other than primary dealers. In light of the concerns discussed previously regarding the possible unintended effects of the current restriction of counterparties, the Board believes it may be inappropriate to continue to limit insured institutions to conducting OTC transactions only with primary dealers. Thus, the Board has decided that during the interim period until final regulations are adopted on this subject, the Board will forbear from taking any enforcement action against an insured institution that enters into an OTC options position with one of the types of counterparties enumerated in the proposed regulation, provided, (1) that the institution initiating the OTC transaction must be in compliance with its regulatory net worth requirement under 12 CFR 563.13, and (2) that the counterparty is ascertained to be in compliance with its applicable net worth or capital requirement. Thus, if an insured institution is not presently satisfying its net worth requirements, it may trade OTC options only with primary dealers, as is authorized under the existing regulations. The Board also may consider requests for forberances from other entitles seeking permission to act as counterparties to insured institutions in OTC options transactions, and requests comment on what other types of entitles may be suitable counterparties and what standards should be applied to such entitles in determining whether they may trade OTC options with insured institutions.

Accounting for Short-Call Options

The Board received letters from a total of 34 commenters in response to the request for comments included as part of the advance notice of proposed rulemaking, dated May 24, 1985. Each of the accounting alternatives identified in the advance notice received the support of some of those persons commenting on the matter. Many commenters expressed their strong belief that the existing regulatory accounting rules accurately reflect the economic substance of a short call options transaction and that those rules should not be changed until such time as the Financial Accounting Standards Board ("FASB") establishes generally accepted accounting principles ("GAPP") applicable to short call options positions. There was also significant support among the commenters for the deferral accounting rules that the Board adopted in April 1985 and later rescinded in May 1985. *See* Board Resolutions 85-420 and 85-421, 50 FR 23395, 23432 (June 4, 1985). Those rules would have required an insured institution to defer and amortize over the estimated life of the matched item any commitment fees received for writing the option, as well as any gains or losses that resulted on the options position.

It is the Board's belief that the present accounting rules are inadequate for dealing with short call options transactions. The present regulatory accounting rules, when applied to short call options transactions, do not accurately reflect the true economic nature of those transactions because the rules allow an institution to recognize as current income a fee received for entering into an options position, without regard to whether the transaction itself produces a gain or a loss to the institution. To the extent that any loss on an options position exceeds the commitment fee received, the net economic result to the institution would be a loss. Under the present rule, an institution could recognize the fee as income over a period of a few months, but could amortize the loss on the options position over a period of many years. The recognition of current income in those circumstances is illusory and the Board believes that its accounting rules should not encourage that practice. Although the rescinded rules would have discouraged institutions from entering into options positions solely to take advantage of favorable accounting treatment, the Board believes that the rules proposed herein would accomplish the same result and would be more readily accepted by the accounting profession. Thus, there is a present need to amend the existing accounting rules. The absence of any GAAP treatment for short call options transactions and the unlikelihood that the FASB will establish GAAP treatment in the near future, as well as the possibility that the present regulatory accounting rules may encourage uneconomical options transactions, requires that the Board amend its accounting rules for short call options. At such time as the FASB determines the appropriate GAAP treatment for short call options, the Board will, of course, reconsider this issue.

Accordingly, the Board is proposing to adopt a simplified market-to-market approach for accounting for short call options transactions. Under the proposed rules, the option commitment fee received for writing a matched call option would be referred until the option expires, the institution is called to perform under the options contract, or the institution offsets its short position. At the time that an institution terminates its short call position through one of the above methods, it would be required to aggregate the commitment fee received with any resulting gain or loss on the options position and record the net result as income or expense. The proposed rules would eliminate any incentive for an institution to enter into short call options positions solely to obtain the benefits of the existing favorable accounting treatment by realizing the commitment fee as current income. The Board believes that by requiring institutions to recognize the net gain or loss at the time the options position is terminated, the resulting accounting will more accurately reflect the true economic substance of a short call options transaction. The Board further notes that the rules proposed herein follow closely the accounting rules used by the federal banking agencies and, in the absence of any GAAP treatment, will provide a more appropriate means to account for short call options transactions.

Because many insured institutions use a fiscal year that ends on December 31, the Board believes that it would be desirable to have any uncertainty regarding the method of accounting for short call options resolved perior to the beginning of the next fiscal year. In light of the fact that the Board already has requested and received public comments on this matter, and in order to eliminate the incentive to engage in financial options transactions solely for accounting reasons, the Board is informing the public of its intention to use January 1, 1986, as the effective date of any final accounting amendments for short call options, if that regulation is adopted substantially in its proposed form.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The proposed rule would allow smaller institutions greater access

to the OTC options market than may exist under the present rules.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap, or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

List of Subjects in 12 CFR Part 563

Savings and loan associations, Savings banks, Securities.

Accordingly, the Board hereby proposes to amend Part 563, of Subchapter D, Chapter V, of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 is revised to read as follow:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 563.17–5 by revising paragraphs (a)(4), (c), (e)(2), (g)(2), (g)(3)(ii)(*b*), (g)(3)(ii)(*c*); by redesignating paragraph (g)(3)(ii)(*d*) as paragraph (g)(3)(ii)(*e*); and by adding new paragraphs (a)(13) and (g)(3)(ii)(*d*), as follows:

§ 563.17–5 Financial options transactions.

(a) *Definitions.* * * *

(4) *Financial options contract.* An agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by (i) an exchange designated or regulated by the Commodity Futures Exchange Commission or the Securities Exchange Commission, or (ii) the insured institution and a "permissible counterparty," as defined paragraph (a)(13) of this section, that are counterparties in an over-the-counter transaction.

* * * * *

(13) *Permissible counterparty.* Any entity that is:

(i) A primary dealer;

(ii) A bank subject to the regulation and supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Federal Reserve Board and that is in compliance with its applicable regulatory capital requirements;

(iii) An institution that is subject to the regulation and supervision of the Federal Savings and Loan Insurance Corporation and is in compliance with its regulatory net worth requirements;

(iv) A broker-dealer registered with the Securities and Exchange Commission and a member of the National Association of Securities Dealers and that is in compliance with its capital requirements;

(v) A futures commission merchant registered with the Commodity Futures Trading Commission and that is in compliance with its capital requirements;

(vi) The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(vii) Any other entity that the Board, upon application, determines to be adequately regulated, capitalized, and audited or examined such that acting as a counterparty in an over-the-counter options transaction with an insured institution would not entail substantial credit risks for the institution.

The Board delegates to the Office of Examination and Supervision, with the concurrence of the Office of General Counsel, the authority to consider and approve such applications.

* * * * *

(c) *Authorized contracts.* An insured institution may engage in financial options transactions using any financial options contracts either (1) designated by the Commodity Futures Trading Commission or approved by the Securities and Exchange Commission; or (2) entered into with a "permissible counterparty" [as defined in paragraph (a)(13) of this section], and based upon a financial instrument that the institution has authority to invest in or to issue, or based upon a financial futures contract.

* * * * *

(e) *Notification and reporting.* * * *

(2) An insured institution shall not engage in over-the-counter financial options transactions with any permissible counterparty unless such counterparty notifies the District Director—Examinations of the Federal Home Loan Bank district in which the insured institution is located immediately following the entering into such transaction, and reports monthly on the outstanding position of such insured institution.

* * * * *

(g) *Accounting.* * * *

(2) *Option commitment fee.* (i) The option commitment fee paid for a long position or received from the sale of a short option shall be amortized to income or expense over the term of the option, except as provided in paragraph (g)(3)(ii) of this section.

(ii) The option commitment fee received from the sale of a matched short call option shall be deferred until the option position is terminated. The option commitment fee received from the sale of an unmatched short call option shall be amortized to income over the term of the option.

(3) *Options contracts.* * * *

(ii) * * *

(*b*) If a commitment fee has not been received with respect to a matched asset, the option commitment fee (except if received for the sale of a short call option) shall be amortized to income or expense over the commitment period by the straight-line method;

(*c*) Any resulting gain or loss from an options position (except from a short call option) shall be treated as a discount or premium on the matched asset of liability;

(*d*) Any resulting gain or loss from a short call options position shall be recognized as income or expense upon termination of the options position;

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–30732 Filed 12–30–85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Deductions, Reductions, and Nonpayments of Benefits; Spouse's Government Pension

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: In these proposed regulations, we are amending our rules on reducing the Social Security benefit amounts of spouses who are receiving Government pensions. The amendments, which implement section 2 of Pub. L. 98–617, provide that, for beneficiaries subject to this reduction, the benefit reduction in all cases will be two-thirds (instead of 100 percent the amount of the spouse's Government pension. The amendments also extend by one month the periods for meeting the existing exceptions to reduction in cases where

an employee's pension eligibility was delayed by one month solely because of a requirement which postponed eligibility for the pension until the month after the month in which all other requirements were met. The changes are effective for benefits payable for December 1984 and later months.

DATES: Comments must be submitted on or before March 3, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6785.

SUPPLEMENTARY INFORMATION: The Social Security Amendments of 1977 (Pub. L. 95-216) introduced in section 334 a provision for reducing dollar-for-dollar the Social Security spouse's benefits of a person who is receiving a Government pension based on work not covered by Social Security. That same section also provided for an exception to the reduction if the spouse was eligible for a Government pension for one or more months in the period December 1977 through November 1982 and met certain other requirements. The Social Security Amendments of 1983 (Pub. L. 98-21) changed the amount of the reduction to two-thirds the amount of the Government pension if the person became eligible for the pension after June 1983. Also in 1983, Pub. L. 97-455 provided an alternative exception if the spouse was eligible for a Government pension before July 1983 and met certain other requirements.

Pub. L. 98-617, enacted November 8, 1984, has further amended the exception and the amount of reduction. Section 2(a) of that Act provides that for December 1984 and later months, the Social Security benefits of spouses or surviving spouses who do not meet one of the exceptions to reduction will be reduced by two-thirds the amount of the person's Government pension which is based on work not covered by Social Security, regardless of when the person first became eligible for the pension.

Under section 2(b) of Pub. L. 98-617, we will consider a person to be eligible for a pension within the appropriate period if the person was otherwise eligible for the pension except for a special requirement which delayed eligibility by one month. For example, Federal employees whose eligibility for a pension was delayed by legislation one month to December 1982 or July 1983 will be considered to be eligible for the pension in November 1982 or June 1983. Thus, those employees can meet an exception to reduction if they also meet the other requirements of the exception. This provision protects against reduction of Social Security benefits for months after November 1984.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. We estimate that these provisions of Pub. L. 98-617 will cost the Social Security trust funds $10 million per year in additional benefit payments. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The proposed regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they involve only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors, and disability insurance.

(Catalog of Federal Domestic Assistance Programs No. 13,802 Social Security—Disability Insurance, 13,803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance)

Dated: October 3, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 6, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart E of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Supart E would be revised to read as follows:

Authority: Secs. 202, 203, 205, 207, and 1102 of the Social Security Act; 49 Stat. 623, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 402, 403, 405, 407, and 1302.

2. Section 404.408a is amended by adding a new paragraph (b)(4), and by revising paragraph (d)(2) to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

* * * * *

(b) *Exceptions.* * * *

(4) If you would have been eligible for a pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, we will consider you to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (b) (2) and (3) of this section. If you meet an exception solely because of this provision, your benefits will be unreduced for months after November 1984 only.

* * * * *

(d) *Amount and priority of reduction.*

* * * * *

(2) If you became eligible for a Government pension before July 1983 and do not meet one of the exceptions in paragraph (b) of this section, we will reduce (to zero, if necessary) your monthly Social Security benefits as a spouse by the full amount of your pension for months before December 1984 and by two-thirds the amount of your monthly pension for months after November 1984.

* * * * *

[FR Doc. 85-30657 Filed 12-30-85; 8:45 am]

BILLING CODE 4190-11-M

POSTAL SERVICE

39 CFR Part 111

Sacking Regulations for Bulk Third-Class Mail

AGENCY: Postal Service.

ACTON: Proposal rule.

SUMMARY: This proposed rule involves changes in mail preparation requirements for bulk third-class mail and is based upon a survey of third-class mail sacking characteristics and a recently completed Postal Service study which analyzed the current minimum sacking requirements for bulk third-class mail. This study was designed to determine a more economical set of minimum sacking requirements for bulk third-class mail which, in turn, would lower operating costs and help relieve sack sorting capacity problems at Bulk Mail Centers ("BMCs"). The results of this study indicate that the current minimum sacking requirements for bulk third-class mail are significantly below the levels that were determined to be the most economical. Consequently, the Postal Service has developed a proposal that would change the minimum sacking requirements for bulk third-class mail.

In general, the proposal would increase the minimum sack fullness requirement for most sacks of bulk third-class mail from current levels to 125 pieces or 15 pounds of mail. Also, under the proposal, carrier route and 5-digit presort mailers would be able to qualify for those respective rates by sacking existing qualifying packages to 3-digit destinations. It is anticipated that implementation of these new regulations could begin as early as April, 1986. In addition to this proposal, a mail classification filing has been submitted to the Postal Rate Commission requesting a language change it the Domestic Mail Classification Schedule which, as currently written, prevents the Postal Service from extending presort discounts to 5-digit packages in 3-digit sacks. Consequently, implementation of a complete final rule must await a change in the Domestic Mail Classification Schedule.

This proposal affects only bulk third-class minimum sacking requirements. The minimum quantity required per mailing remains unchanged at 200 pieces or 50 pounds of mail. Similarly, packaging requirements are unchanged.

DATES: Comments must be received on or before January 30, 1986.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday, in the Rates and Classification Department, Room 8620, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas P. Shipe, (202) 268–2678.

SUPPLEMENTARY INFORMATION:

I. Background

In general, preparation requirements for bulk third-class mail are stated in terms of pieces per package and some minimum quantity per sack. These requirements are set forth in 667 of the Domestic Mail Manual. In the case of carrier route mail, this minimum sacking requirement is currently one package of 10 pieces of mail presorted to a particular carrier route. Carrier route mailers may place their qualifying packages either in carrier route sacks which contain mail for a single carrier, or in carrier routes sacks which contain packages for more than one carrier within a 5-digit ZIP Code destination. The choice between carrier route or carrier routes sacking is left largely up to the mailer; however, if there are 20 pounds or 1,000 cubic inches of mail for the same carrier route, that mail must be placed in a carrier route sack.

Availability of the 5-digit presort rate requires a minimum of 50 pieces or 10 pounds of mail for either a 5-digit ZIP Code area or a unique 3-digit multi-coded city area. If there are 50 pieces or 10 pounds of mail for a single 5-digit ZIP Code destination, that mail must be placed in a 5-digit sack. If, after preparing all required 5-digit sacks, there are 50 pieces or 10 pounds of presorted mail for 5-digit areas within a unique 3-digit city, then those pieces can qualify for the 5-digit rate if placed in a unique 3-digit city sack. Remaining pieces must be sacked in accordance with the requirements for basic rate third-class mail and must pay postage at the basic rate.

Sacks of basic rate mail may contain as few as 1 package or 10 pieces of mail. The only requirement is that twelve or more packages for a particular 5-digit, 3-digit, or state destination area must be placed in a separate sack. This requirement must first be fulfilled for 5-digit sacks, followed by 3-digit sacks, and finally state sacks. Sacks containing fewer than twelve packages may be prepared. Packages remaining after state sacks have been prepared must be made up into mixed-states sacks. There are also several optional sack types which basic rate mailers may prepare, such as Optional City, Optional SCF and Optional SDC sacks.

From time to time it is necessary for the Postal Service to change mail preparation requirements. Changes may be necessary to deal with various operational problems but may also be required to adapt to refinements in mail processing activities or changes in mailer practices. In the past, a number of changes have been required in the bulk third-class sacking requirements. For example, prior to February, 1980, the minimum sacking requirement for bulk third-class mail was one-third of a sack. This minimum was developed during the time when most mail was transported by rail. In order to minimize the charges for sack handling assessed by the railroads, the Post Office Department required the preparation of sacks which were at least one-third full.

In February, 1980, the minimum sacking requirement for bulk third-class mail was reduced from one-third of a sack to one package or 10 pieces of mail. The Postal Service identified three primary reasons for this change. First, because of changes in the modes of transportation used by the Postal Service, the need for a one-third of a sack standard was no longer considered paramount. Second, the changes would encourage the preparation of sacks that would require opening by the Postal Service at a facility very near the final destination of the enclosed mail. This, in turn, would reduce the volume of individual packages of mail to be sorted at Sectional Center Facilities (SCFs) and State Distribution Centers (SDCs). Finally, by making the mimimum requirements optional (*i.e.*, the decision to prepare sacks at the minimum quantity was left up to the mailer) mailers could rely on their own cost analyses in determining if it would be advantageous to prepare lightweight minimum quantity sacks. It was generally believed that, for cost reasons, mailers would not make up large numbers of lightweight "skin" sacks.

In March, 1981, the Postal Service established distinct rates for the three categories of bulk third-class mail that had been created by the Governors in Rate Commission Docket No. MC78–2. Separate rates were established for carrier route presorted mail, 5-digit presorted mail and all other bulk third-class mail. Under this three-tiered rate structure, mailers found it financially beneficial to prepare more sacks of fewer pieces and the Postal Service found itself inundated with lightweight sacks of bulk third-class mail. This

created two major problems: (1) Sack sorting capacity problems at BMCs and (2) an inability to accommodate demands of many mailers for sacks. A review of the situation indicated that these problems primarily involved "skin" sacks of bulk third-class 5-digit rate mail. Consequently, in September, 1981, the minimum sacking requirement for 5-digit mail was increased from 1 package or 10 pieces to 50 pieces or 15 pounds of mail. At the same time, the eligibility requirement for the 5-digit rate was relaxed so that 5-digit packages in unique 3-digit city sacks qualified for the rate provided the sacks also met the 50-piece or 15-pound minimum requirement.

A final rule, published in December, 1981, lowered the above minimum from 50 pieces or 15 pounds of mail to 50 pieces or 10 pounds of mail. Since 1981 there have been no changes in bulk third-class minimum sacking requirements.

II. Continued Problems

Volume growth of bulk third-class mail since 1981 has again created sack sorting capacity problems at BMCs. In September, 1983, the Board of Governors authorized funding of approximately $50 million for additional sack sorting equipment at four BMCs. However, at that time, projections of continuing volume growth indicated that additional sack sorting capacity would be required at virtually all BMCs by the latter part of the 1980s. In an effort to identify and evaluate potential solutions to the sack sorting capacity problems, a task force was established by the Postal Service's Operations Group in January, 1984. One of the primary alternatives under consideration was a reduction in the number of sacks generated by mailers to be brought about through changes in the mail make-up requirements.

A primary concern of the task force was the degree to which the capacity problems were caused by large numbers of lighweight "skin" sacks. As a result, a survey was undertaken to determine the number of lightweight third-class sacks in the BMC network and to assess their contribution to sack sorting workloads.

The results of this survey showed that lightweight sacks of bulk third-class mail make up a substantial portion of BMC sack sorter workloads. Approximately 21 percent of the third-class sacks sampled contained less than 5 pounds of mail; nearly 38 percent had less than 10 pounds. These lightweight sacks most prevalent in the discounted rate categories. For example; 44 percent of the carrier route sacks sampled contained less than 5 pounds of mail; most of these contained only one package. Five-digit rate mail, which represented the largest portion of the third-class sack sorter workload, showed similar, although somewhat less pronounced, characteristics. Based on the results of this survey, a study was initiated to examine the merits of the current minimum sacking regulations.

III. Minimum Sacking Study

The objective of minimum sacking study was to determine the optimal minimum sack size for bulk, third-class mail and use this to develop a more economical set of minimum sacking requirements. This, in turn, would allow the Postal Service to better control its costs and potentially provide relief from the BMC sack sorting capacity problems. The minimum sacking study was designed to determine the quantity of mail needed in a sack in order to justify the cost of handling that sack. The study specifically examined carrier route, carrier routes, 5-digit, and 3-digit sacks and examined the merits of allowing 3-digit sacking of carrier route and 5-digit mail.

The results of this study showed that the Postal Service's current minimum sacking requirements are significantly below the levels determined to be most economical. In addition, the study revealed that for carrier route, carrier routes and 5-digit sacks below the minimum levels, costs could be reduced if the mail were sacked to 3-digit destinations. This is so because the costs avoided by eliminating sacks below the minimum fullness level are greater than the additional package handling costs incurred from having this mail placed in 3-digit sacks. Based on this conclusion, the Postal Service is proposing a minimum sacking requirement of 125 pieces or 15 pounds of mail for most sacks of bulk third-class mail.

Additionally, carrier route and 5-digit rate mailers could qualify for the discounted rates by preparing 3-digit sacks of qualifying packages at or above the minimum levels. However, only those 5-digit packages and pieces which currently qualify for the presort discount rate would be eligible to be sacked to 3-digit ZIP Code destinations and pay the 5-digit rate. Also, only one rate category of mail could be placed in any particular 3-digit sack, *i.e.*, a 3-digit sack of 5-digit rate mail could contain only 5-digit rate mail; carrier route rate and basic rate mail would be required to be placed in separate 3-digit sacks.

Two elements of the proposed rule distinguish it from the 1980–1981 third-class preparation changes described above. First, the proposed changes are designed not to alter substantially the availability of discounted 5-digit rates. Unlike the eligibility for the carrier-route category, which is currently based simply upon the number of pieces separated for an individual carrier route, eligibility for the 5-digit rate has been based upon the preparation of a 5-digit sack containing a minimum of 50 pieces or 10 pounds of mail. Because the proposed rule would extend discounts to 5-digit packages in 3-digit sacks, mail currently not qualifying for the 5-digit rate could become eligible for this lower rate. The Postal Service wishes to avoid the loss of revenue that would result; thus, the proposed rule calls for maintenance of the 50-piece/10 pound requirement for rate eligibility. Consequently, a minimum of 50 pieces or 10 pounds of mail would be required for each 5-digit ZIP Code area presented in a 3-digit sack to qualify for the 5-digit presort rate.

The second distinguishing feature involves portions of carrier-route mailings destined for the smallest 5-digit ZIP Code service areas. In these small service areas, carrier-route mailers could not possibly assemble enough mail to permit the preparation of a 5-digit carrier routes sack. Thus, the proposed rule would be provide an exception to the 125-piece/15-pound fullness requirement for 5-digit carrier routes sacks containing pieces addressed to 90 percent or more of the residential delivery points served by such offices.

IV. Benefits From the New Requirements

As explained above, the proposed sacking requirements are expected to produce lower operating costs and to relieve the strain on BMC sack sorting capacity. Eliminating the inefficiencies associated with handling lightweight sacks from the postal system, of which mailers bear the cost, would benefit mailers and the Postal Service in the future. The Postal Service estimates that BMC sack sorter workloads could be reduced by 23 percent and that capital expenditures for additional sack sorting equipment at individual BMCs could be reduced, delayed, or possibly eliminated in some cases.

Overall, the Postal Service expects that the new sacking requirements would result in more reliable and consistent service for bulk third-class mail. The reduction in the number of sacks processed at BMCs would eliminate many of the periodic sack sorting capacity shortfalls currently experienced. However, benefits will not accrue only at BMCs. Inefficient handling and sorting of lightweight

sacks at other postal facilities would also be eliminated.

Package sorting activities would necessarily increase under the new proposed sacking requirements. However, the offsetting reduction in sack handling activities would be more than enough to provide overall system-wide cost reductions. The additional package sorting activities are not expected to have any adverse effect on bulk third-class service.

Under the new proposal, carrier route rate and 5-digit rate mail in 3-digit sacks would undergo a package handling at 3-digit (Sectional Center) facilities. Distribution of packages of carrier route presorted mail to 5-digit separations does occur in our present operating environment. However, this new activity would require only minor adjustments for the facilities involved and, given the reduction in the number of sacks in the system, would maintain or improve the overall service provided bulk third-class mail. It is important to note that the Postal Service's service commitment for carrier route and 5-digit packages in 3-digit sacks would be the same as the existing service commitment for these packages in carrier route, carrier routes or 5-digit sacks. To ensure that this commitment is met, the Mail Processing Department at Headquarters would work closely with regional and field managers to identify the necessary adjustments required in field operations. The Postal Service plans to monitor service performance under the new proposed regulations, and would develop appropriate operating procedures for the new package handling activities so that service commitments are maintained.

The proposed new third-class sacking requirements should also provide some direct benefits to mailers. The proposal would reduce the number of sacks prepared by most mailers. This, in turn, should act to lower mailer preparation costs. Also, the reduction in required sack preparations should lower sack demand, providing relief from sack shortages experienced by many mailers.

A comparison of current and proposed sack minimums including a detailed description of the new proposed sacking requirements is provided below.

General

Overall, the minimum quantity required per mailing remains unchanged at 200 pieces or 50 pounds of mail. Similarily, packaging requirements are unchanged at 10 pieces per package. Only the sacking requirements would be changed. The changes for each presort level would be as follows:

Carrier Route Presort Level

Current Sack Minimums

Carrier Route Sack 5-Digit Carrier Routes Sack	10 pieces per sack

Proposed Sack Minimums

Carrier Route Sack 5-Digit Carrier Routes Sack 3-Digit Carrier Routes Sack	125 pieces or 15 pounds of mail

When there are 125 pieces or 15 pounds of qualifying mail to the same carrier route, the mail MUST be placed in a carrier route sack. Carrier Route sacks containing fewer than 125 pieces or less than 15 pounds of mail for the same carrier route WILL NOT be accepted.

If, after preparing all required Carrier Route sacks, there are 125 pieces or 15 pounds of qualifying mail to different carrier routes within the same 5-digit ZIP Code area, the mail MUST be placed in 5-Digit Carrier Routes Sacks. Five-Digit Carrier Routes Sacks containing fewer than 125 pieces or less than 15 pounds of mail WILL NOT be accepted.

Exception: Saturation mailers of carrier route presorted mail may, at their option, prepare 5-digit Carrier Routes sacks containing fewer than 125 pieces of mail for those 5-digit ZIP Code areas that do not have a sufficient number of residential deliveries to meet the 125-piece minimum at a 90% saturation level. A saturation mailing is defined as a mailing sent to at least 90% of the total residential addresses within a 5-digit ZIP Code area.

If, after preparing all required Carrier Route and 5-Digit Carrier Routes sacks there are 125 pieces or 15 pounds of qualifying mail to different carrier routes within the same 3-Digit ZIP Code area, the mail MUST be placed in 3-digit ZIP Code area.

Residual Pieces: All pieces not meeting the minimums required above are residual pieces and must be placed in 3-digit Carrier Routes Sacks. In other words, to qualify mail for the carrier route presort rate, a minimum of 125 pieces or 15 pounds of carrier presorted mail for a 3-digit ZIP Code area is required. As currently required, the number of residual pieces to any single 5-digit ZIP Code area may not exceed 5 percent of the total qualifying presorted carrier route pieces addressed to that 5-digit area. Residual pieces must have postage paid at the third-class "basic" level bulk rate.

Five-Digit Presort Level

Current Sack Minimums

5-Digit Sack Unique 3-Digit City Sack	50 pieces or 10 pounds of mail

Proposed Sack Minimums

5-Digit Sack Unique 3-Digit City Sack 3-Digit Sack*	125 pieces or 15 pounds of mail.

*Note: A minimum of 50 pieces or 10 pounds of mail is required for each 5-Digit ZIP Code destination within a (non-unique) 3-Digit sack to qualify for the 5-Digit presort rate.

When there are 125 pieces or 15 pounds of qualifying 5-digit mail for the same 5-digit desination the mail MUST be placed in a 5-digit sack. Five-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail WILL NOT be accepted.

If, after preparing all required 5-digit sacks, there are 125 pieces or 15 pounds of qualifying 5-digit mail to different 5-digit ZIP Code destinations within a 3-digit service area, they MUST be placed in a 3-digit sack. Only 5-digit ZIP Code destinations with a minimum of 50 pieces or 10 pounds of mail may be

placed in these 3-digit sacks. Three-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail WILL NOT be accepted.

Unique 3-digit city sacking requirements remain optional. A mailer with a total of 125 pieces or 15 pounds of 5-digit mail for 5-digit ZIP Code destinations within a unique 3-digit city, may place this mail in a Unique 3-digit City sack. This mail qualifies for the 5-digit rate.

All pieces not meeting the minimums required above are residual pieces and must be sacked in accordance with the requirements for basic rate mail described below.

Machinable Parcel Preparation Requirements

Five-digit presort requirements for machinable parcels remain essentially unchanged with the exception that 10 or more pounds for a single 5-digit area must be placed in a 5-digit sack.

Basic Rate Mail

Current Sack Minimums

5-Digit Sack Optional City Sack 3-Digit Sack Optional SCF Sack Optional SDC Sack State Sack	No minimums

Twelve or more packages for any sack level MUST be made up to that sack level. This requirement must be fulfilled beginning with 5-digit sacks and working down to State sacks. City, SCF, and SDC sacking is optional.

Proposed Sack Minimums

5-Digit Sack Optional City Sack 3-Digit Sack Optional SCF Sack Optional SDC Sack State Sack	125 pieces or 15 pounds of mail

Beginning with 5-Digit sacks and working down to State sacks—125 pieces or 15 pounds of mail for each sack level MUST be sacked to that level. This is requird for 5-digit, 3-digit and State sacks. City, SCF, and SDC sacking remains optional but must also contain 125 pieces or 15 pounds of mail when prepared. After complying with the above requirements, all remaining packages must be placed in Mixed States Sacks. There are no minimums for Mixed States Sacks.

V. Recommended Changes

The proposed changes to bulk third-class sacking requirements would, in part, be contingent upon the outcome of a mail classification proceeding before the Postal Rate Commission. A request for a recommended decision on a change in the Domestic Mail Classification Schedule ("DMCS") has been submitted to the Postal Rate Commission. That portion of these proposed regulation changes pertaining to carrier route rate and basic rate mail is not affected by that filing. However, the 5-digit portion of these proposed changes would allow qualifying 5-digit pieces and packages (those consisting of 50 pieces or 10 pounds to a 5-digit area) to be placed in 3-digit sacks and retain eligibility for the 5-digit rate. The requested change in the DMCS is designed to be consistent with that portion of this proposed rule. Consequently, implementation of the 5-digit portion of the proposed sacking requirements would not take place until the DMCS change is made.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1. Comments regarding an adequate conversion period would be particularly helpful. The Postal Service plans to permit *voluntary* compliance with the new regulations upon publication of a final rule, but *require* compliance after 60 days.

PART 111—[AMENDED]

1. The authority for 39 CFR continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

2. In 622, 622.11a, 622.11b, and 622.12a are revised to read as follows:

PART 622—THIRD-CLASS BULK MAIL

622.1 Eligibility

.11 Carrier Route Presort Level

a. Minimum Quantity. Each mailing must consist of at least 200 pieces or 50 pounds of mail presorted to carrier routes in accordance with 667.3. Each piece must be part of a group of 10 or more pieces packaged to the same carrier route, rural route, highway contract route, post office box section, or general delivery unit. Packages must be placed in either a carrier route, 5-digit carrier routes, or 3-digit carrier routes sack. Each sack must contain a minimum of 125 pieces or 15 pounds of qualifying carrier route packages to be eligible for the carrier route presort level rate.

Exception: Saturation mailers of carrier route presorted mail may, at their option, prepare 5-digit carrier routes sacks containing fewer than the 125 pieces of mail for those 5-digit ZIP Code areas that do not have a sufficient number of residential deliveries to meet the 125 piece minimum at a 90% saturation level. A saturation mailing is defined as a mailing sent to at least 90% of the total residential addresses within a 5-digit ZIP Code area.

b. Residual. Those pieces not part of a group of 10 or more pieces packaged to a particular carrier route, or those which are part of a group of 10 or more pieces packaged to a particular carrier route but which cannot be placed in a sack containing a minimum of 125 pieces or 15 pounds of qualifying mail, are residual pieces. Residual pieces may be included in a carrier route presort rate mailing and may bear the Carrier Route Presort endorsement subject to the following provisions:

(1) Residual pieces do not count towards the minimum quantity requirements for the carrier route presort level rate.

(2) The number of residual pieces to any single 5-digit ZIP Code area may not exceed 5% of the total qualifying presorted carrier route pieces addressed to that 5-digit area.

(3) Residual pieces are not eligible for the carrier route presort level rate and must have postage paid at the appropriate third-class "basic" level bulk rate.

(4) Residual pieces must be prepared in accordance with 667.3.

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622.12 Five-Digit Presort Level

.12 Five-Digit Presort Level

a. Minimum Quantity. Each mailing must consist of at least 200 pieces or 50

pounds of qualifying mail presorted to 5-digit destinations. Each piece must be part of a package of 10 or more pieces to the same 5-digit ZIP Code destination and the package must be placed in a 5-digit or 3-digit sack. Five-digit sacks must contain a minimum of 125 pieces or 15 pounds of mail. Three-digit sacks must contain a minimum of 125 pieces or 15 pounds of mail with a minimum of 50 pieces or 10 pounds to each 5-digit ZIP Code destination contained within the 3-digit sack. Sacks containing fewer than 125 pieces or less than 15 pounds of mail may NOT be prepared. Fifty pieces or 10 pounds of mail for a 5-digit destination will qualify for the 5-digit presort level rate when prepared in packages and bundles presented on pallets in accordance with 667.6.

Exception: For unique 3-digit multi-ZIP Code cities listed in Exhibit 122.63b, mailers may commingle different 5-digit packages of 10–49 pieces in sacks providing:

(1) Each sack contains at least 125 pieces or 15 pounds of mail, and

(2) 3-digit city packages are NOT included in the sack, and

(3) 125 pieces or 15 pounds of mail for a single 5-digit ZIP Code (within the unique 3-digit city) must be sacked separately.

3. In 667, 667.132, 667.221, 667.222, 667.312, 667.32, and 667.42 are revised to read as follows:

667.1 Preparation Requirements for Basic Rate

* * * * *

.13 Sacking Requirements

* * * * *

.132 Sortation

a. 5-Digit Sacks. When there are 125 pieces or 15 pounds of mail packaged to the same 5-digit ZIP Code destination, the packages must be placed in 5-digit sacks labeled to the 5-digit destination.

Five-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail may NOT be prepared. Each sack must be labeled in the following manner:

Line 1: City, State and 5-digit destination.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

PHILADELPHIA PA 19118
3C FLATS
BOSTON MA

Note.—If a mailing consists of both machinable parcels and irregular parcels as defined in 128 and as provided for in 622.14, the contents line of 5-digit sack labels must read "3C MACH and IRREG." When there are 10 pounds of material for a 5-digit ZIP Code destination, it must be placed in a 5-digit sack. Sacks containing less than 10 pounds of material may be prepared. Pieces in a 5-digit sack that contains machinable and irregular parcels need not be packaged as required by 667.121b.

b. Optional City Sacks. If after preparing required 5-digit sacks, there are 125 pieces or 15 pounds of mail packaged to the multi-ZIP Coded cities listed in Exhibit 122.63a, mailers are encouraged to place those packages into city sacks. City sacks containing fewer than 125 pieces or less than 15 pounds may NOT be prepared. Each sack must be labeled in the following manner:

Line 1: City, State and Lowest 5-Digit ZIP Code.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

AURORA IL 60504
3C LTRS
BOSTON MA

Note.—An optional city sack may contain both machinable and irregular parcels (as defined in 128) when there are at least 10 pounds of material for the optional city sack. The contents line for optional city sack labels for sacks which are part of a mailing containing machinable and irregular parcels must read "3C MACH AND IRREG." Pieces in an optional city sack that contains both machinable and irregular parcels need not be packaged as required by 667.121c.

c. 3-Digit Sacks. When, after preparing required 5-digit and optional city sacks, there are 125 pieces or 15 pounds of mail packaged to the same 3-digit ZIP Code destination, the packages must be made up into 3-digit sacks. Three-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: City, State and 3-Digit ZIP Code prefix.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

PHILADELPHIA PA 191
3C FLTS
ROCHESTER NY

d. Optional SCF Sacks. When, after preparing required 5-digit, optional city, and required 3-digit sacks, there are 125 pieces or 15 pounds of mail packaged to post offices in the same sectional center facility (SCF) service areas listed in 122.63d, mailers are encouraged to place the packages into SCF sacks. SCF sacks containing fewer than 125 pieces or less than 15 pounds of mail will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: Name and State of SCF and Lowest 3-Digit ZIP Code for that SCF.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

SCF PHILADELPHIA PA 190
3C FLATS
BOSTON MA

Note.—A list of all SCF's serving more than one 3-digit ZIP Code area, the first three digits of all ZIP Codes served by these facilities, and the principal 3-digit ZIP Code prefix that are to be used on SCF sack labels is contained in Exhibit 122.63d.

e. Optional SDC Sacks. When, after preparing required 5-digit, optional city, required 3-digit and optional SCF sacks, there are 125 pieces or 15 pounds of mail addressed to post offices in the same state distribution center (SDC) service areas listed in Exhibits 122.63g and 122.63h, mailers are encouraged to prepare SDC packages and place them into SDC sacks. SDC sacks containing fewer than 125 pieces or less than 15 pounds will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: Name of SDC for Destination Area.

Line 2: Contents and 2 Letter State Abbreviation.

Line 3: Office of Mailing.

Sample:

DIS PITTSBURGH PA 150
3C FLTS PA
SAN FRANCISCO CA

f. State Sacks. When after preparing required 5-digit, optional city, required 3-digit, optional SCF, and optional SDC sacks, there are 125 pieces or 15 pounds of mail packaged to the same state, the packages must be placed into state sacks. Sacks containing fewer than 125 pieces or less than 15 pounds will NOT be accepted. Each sack must be labeled in accordance with Exhibits 122.63j, 122.63k, or 122.63L, as applicable, and in the following manner:

Line 1: Name of SDC for State of Destination.

Line 2: Contents and 2 Letter State Abbreviation.

Line 3: Office of Mailing.

Sample:

DIS KANSAS CITY MO 640
3C LTRS MO
SCRANTON PA

g. Mixed States Sacks. Packages remaining after required states sacks have been prepared must be made up into mixed states sacks. Each sack must be labeled in the following manner:

Line 1: Mixed States Distribution Location.

Line 2: Contents followed by the words "MIXED STATES" OR "MXD STATES."

Line 3: Office of Mailing.

Sample:

DIS CHICAGO IL 606
3C LTRS MIXED STATES OR MXD STATES

CHICAGO IL

h. Loose Pack Sack. The term loose pack sack refers to the placement of unpackaged, unbound mail pieces in a receptacle such as a mail sack. Management Sectional Center (MSC) managers may authorize mailers to loose pack pieces in full No. 3 sacks without packaging when all material in a sack would normally be "worked" at the point where the sack is opened, e.g., if a 3-digit sack contains no more than nine pieces for any one 5-digit destination. Pieces must be placed to maintain orientation of the pieces while in transit. Mailers desiring to loose pack pieces must request authorization through the post office of mailing.

Note.—The following abbreviations may be used on the contents line of sack labels:

LTRS.....LETTERS
FLTS.....FLATS
MXD.....MIXED

* * * * *

667.2 Machinable Parcel Preparation Requirements.

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.22 Sacking Requirements.

.221 5-Digit Sacks. When there are 10 pounds of material addressed to the same 5-digit ZIP Code destination, they must be placed in 5-digit sacks. Each sack must be labeled in the following manner:

Line 1: City, State and 5-Digit Destination.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

BINGHAMTON NY 13901
3C MACH
WASHINGTON DC

.222 Destination Bulk Mail Center (BMC) Sacks. If, after preparing required 5-digit sacks there are 10 pounds or more of material to a destination BMC delivery area, they must be placed in a destination BMC sack. Each sack must be labeled in the following manner:

Line 1: Destination BMC.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

BMC CHICAGO IL 608
3C MACH
ATLANTA GA

667.3 Preparation Requirements for Carrier Route Presort Level Rate

.31 Packaging

* * * * *

.312 Residual Packages. All residual packages MUST be labeled with a Red label "D" to facilitate postal verification and handling and be placed in 3-digit carrier routes sacks. Residual packages MUST be prepared in one of the following ways:

a. Residual packages of 10 or more pieces to the same carrier (those which could not be placed in a sack containing at least 125 pieces or 15 pounds of mail) must be labeled with a Red Label "D" and placed in a 3-digit carrier routes sack. In addition to the Red Label "D", residual carrier packages may also be labeled to the carrier route in accordance with 667.311a or b.

b. Residual pieces of fewer than 10 pieces to a single carrier route may be secured in packages in accordance with 667.311. In addition to the Red Label "D" residual carrier packages may also be labeled to the carrier route in accorance with 667.311a or b.

c. Residual pieces for an individual carrier route not packaged to a carrier route as provided in 667.312a or 667.312b, must be made up into 5-digit packages.

.32 Sacking. All qualifying packages of 10 or more pieces to the same carrier route must be placed in a sack and must be prepared as follows:

.321 Carrier route sacks. When there are 125 pieces or 15 pounds of qualifying mail to the same carrier route the mail must be placed in a carrier route sack. Carrier route sacks containing fewer than 125 pieces or less than 15 pounds of mail for the same carrier route may NOT be prepared. Each sack must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code Destination.

Line 2: Contents and Carrier Route, Rural Route, Post Office Box Section, Highway Contract Route, or General Delivery Unit.

Line 3: Office of Mailing.

Sample:

SAN FRANCISCO CA 94133
3C LTRS—CARRIER ROUTE 18
PORTLAND OR

.322 Five-Digit Carrier Routes Sacks. When, after preparing all required Carrier Route sacks, there are 125 pieces or 15 pounds of qualifying mail to different carrier routes within the same 5-digit ZIP Code area the mail must be placed in 5-digit Carrier Routes sacks labeled to the 5-digit ZIP Code destination. Five-Digit Carrier Routes sacks containing fewer than 125 pieces or less than 15 pounds of mail may only be prepared under the following exception:

Exception: Saturation mailers of carrier route presorted mail may, at their option, prepare 5-digit Carrier Routes sacks containing fewer than the 125 pieces of mail for those 5-digit ZIP Code areas that do not have a sufficient number of residential deliveries to meet the 125 piece minimum at a 90% saturation level. A satuation mailing is defined as a mailing sent to at least 90% of the total residential addresses within a 5-digit ZIP Code area.

Five-Digit Carrier Routes sacks must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code Destination.

Line 2: Contents followed by the words CARRIER ROUTES.

Line 3: Office of Mailing.

Sample:

SAN FRANCISCO CA 94133
3C LTRS CARRIER ROUTES
SYRACUSE NY

.323 Three-Digit Carrier Routes Sacks. When, after preparing all required Carrier Route and 5-digit Carrier Routes sacks, there are 125 pieces or 15 pounds or more of qualifying mail to different carrier routes within the same 3-digit ZIP Code area, they MUST be placed in 3-digit Carrier Routes sacks and labeled to the 3-digit ZIP Code destination.

Note.—All packages of residual pieces must be placed in 3-digit Carrier Routes sacks labeled to the 3-digit ZIP Code destination.

Each 3-digit Carrier Routes sack must be labeled in the following manner:

Line 1: City, State and 3-Digit ZIP Code Prefix.

Line 2: Contents followed by the words MIXED CARRIER ROUTES.

Line 3: Office of Mailing.

Sample:

BINGHAMTON NY 137
3C FLATS MIXED CARRIER ROUTES
WASHINGTON DC

Note.—The following abbreviations may be used on the contents line of sack labels:

LTRS.....LETTERS
FLTS.....FLATS
MXD.....MIXED
CAR RTS.....CARRIER ROUTES

* * * * *

667.4 Preparation Requirements for 5-Digit Presort Level Rate.

* * * * *

.42 Sacking. All packages of 10 or more pieces to the same 5-digit ZIP Code destination must be placed in a 5-digit or 3-digit sack containing a minimum of 125 pieces or 15 pounds of mail and must be prepared as follows:

.421 5-Digit Sacks.

When there are 125 pieces or 15 pounds of qualifying 5-digit mail for the same 5-digit destination, they must be placed in a 5-digit sack. Five-digit sacks containing fewer than 125 pieces of less than 15 pounds of qualifying mail will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code destination.

Line 2: Contents.
Line 3: Office of Mailing.
Sample:

ARLINGTON, VA 22202
3C LTRS
BOSTON MA

.422 3-Digit Sacks. When, after preparing all required 5-digit sacks, there are 125 pieces or 15 pounds of qualifying 5-digit presort mail to different 5-digit ZIP Code destinations within a 3-digit service area, they MUST be placed in 3-digit sacks. To qualify for the 5-digit presort level rate there must be:

1. A minimum of 50 pieces or 10 pounds of 5-digit presort mail for any 5-digit ZIP Code separation within the 3-digit sack.

OR

2. A minimum of 10 or more pieces of 5-digit presort mail for any 5-digit ZIP Code separation within a unique 3-digit mulit-ZIP Code city sack. A list of unique 3-digit multi-ZIP Code cities is provided in Exhibit 122.63b.

ONLY qualifying 5-digit packages may be placed in the 3-digit sacks. Each 3-digit sack must be labeled in the following manner:

Line 1: City, State and 3-digit ZIP Code Prefix.
Line 2: Contents followed by the words "MIXED 5-DIGIT PKGS".
Line 3: Office of Mailing.
Sample:

BINGHAMTON NY 137
3C LTRS MIXED 5-DIGIT PKGS
PHILADELPHIA PA

Note.—The following abbreviations may be used on the contents line of sack labels:

LTRS	LETTERS
FLTS	FLATS
MXD	MIXED
CAR RTS	CARRIER ROUTES
PKGS	PACKAGES
DG	DIGIT

An appropriate amendment to 39 CFR 111.3 reflect these changes will be published when the final rule is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-30901 Filed 12-30-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300125; FRL-2936-1]

Revocation of Heptachlor Tolerances

Correction

In FR Doc. 85-29116 beginning on page 50643 in the issue of Wednesday, December 11, 1985, make the following correction: On page 50645, in the second column, in table 3, in the first entry ("Fat of meat . . ."), in the third column, "0.02" should read "0.2".

BILLING CODE 1505-01-M

40 CFR Part 435

[OW-FRL-2947-2]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the public comment period on the proposed best available technology effluent limitations guidelines and new source performance standards for the offshore oil and gas industry that were published in the **Federal Register** on August 26, 1985. (50 FR 34592).

DATES: The comment period for the proposed rule is extended by 60 days to end on March 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy, Industrial Technology Division (WH-552), U.S. EPA, 401 M Street, SW., Washington, DC 20460, or call (202) 382-7131.

SUPPLEMENTARY INFORMATION: On August 26, 1985, EPA published best available technology effluent limitations guidelines and new source performance standards in the **Federal Register** for review and comment (50 FR 34592). The comment period began on September 16, 1985 and was to end on December 16, 1985.

On November 13, 1985, the Agency extended the comment period to end on January 15, 1986. (50 FR 46784.)

The Agency recently received a request by the American Petroleum Institute (API) to extend the comment period to end 90 days beyond the December 16, 1985 date. The basis of API's request was to provide additional time to complete certain projects that would serve to support API's comments on the proposed regulation. The Agency has reviewed the request and has determined that it is appropriate to extend the comment period to end on March 15, 1986.

Dated: December 23, 1985.

L.J. Jensen,

Assistant Administrator for Water.

[FR Doc. 85-30891 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42002D; FRL 2946-7]

Fluoroalkenes; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on fluoroalkenes. The extension responds to a request by the Fluoroalkenes Industry Group (FIG) for additional time.

DATE: Written comments on the proposal should be submitted on or before March 7, 1986.

ADDRESS: Submit written comments, identified by the document control number [OPTS-42002D], in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

The public record supporting this action is available for inspection in Rm. E-107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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, DC 20460. Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule for the fluoroalkenes vinylidene fluoride, vinyl fluoride, hexafluoropropene, and tetrafluoroethene, published in the **Federal Register** of November 6, 1985 (50 FR 46133), announcing EPA's conclusion that health effects testing for the fluoroalkenes is warranted under section 4(a) of the Toxic Substances Control Act. The document proposes testing for (1) inhalation subchronic toxicity for hexafluoropropene (HFP), (2) inhalation oncogenicity for vinylidene fluoride (VDF), and vinyl fluoride (VF), and if triggered by the results of the proposed mutagenicity testing, for tetrafluoroethene (TFE) and HFP, (3) reproductive effects for VDF, and (4) mutagenicity testing for VF, VDF, TFE, and HFP. The document also requested public comment on the proposed testing and on related issues.

The FIG has requested an extension of the comment period for the following

reasons: (1) The proposed testing is much more extensive than was originally proposed as part of the previous negotiated testing agreement, and therefore extra time is needed to review the appropriateness of the additional required tests; (2) the fluoroalkenes encompass a chemical category of four different chemicals involving five different companies, and therefore extra time is needed to coordinate the different companies' responses; and (3) the FIG expects new test data from an industry-sponsored study on VDF to become available in late February 1986, and these test data are expected to have an improtant bearing on the details of the testing proposed in the NPRM and should therefore be included in FIG's comments.

Therefore, in response to the FIG's request the Agency is extending the comment period to March 7, 1986.

Authority: 15 U.S.C. 2603.

Dated: December 23, 1985.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-30888 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 50, No. 251
Tuesday, December 31, 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.

CIVIL RIGHTS COMMISSION

Kansas Advisory Committee; 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 Kansas Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m. and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis, or Melvin Jenkins, Director of the Central States Regional Office at (816)374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30907 Filed 12-30-85; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; 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 Missouri Advisory Committee to the Commission will convene at 8:45 p.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m. and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Morris Zimring, or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30908 Filed 12-30-85; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; 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 Nebraska Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m., and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Nebraska, or Melvin Jenkins Director of the Central States Regional Office at (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30909 Filed 12-30-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; 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 Ohio Advisory Committee on the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on January 18, 1986, at the Clarion Hotel, 141 W. 6th Street, Cincinnati, Ohio. The purpose of the meeting is to discuss a project on fair housing in Parma, another project on education, and proposals for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC December 24, 1985.

Bert Silver;

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30910 Filed 12-30-85; 8:45 am]

BILLING CODE 6335-01-M

Wisconsin Advisory Committee; 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 Wisconsin

Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on January 22, 1986, at the Wisconsin Union, 800 Langdon, Madison, Wisconsin. The purpose of the meeting is to discuss Indian civil rights in Wisconsin, school desegregation in Milwaukee, and new projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistent Staff Director for Regional Programs.

[FR Doc. 85-30911 Filed 12-30-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 319]

Resolution and Order Approving the Application of the South Louisiana Port Commission, for a Foreign-Trade Zone in the Parishes of St. Charles, St. John the Baptist, and St. James, LA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the South Louisiana Port Commission, a Louisiana Public Corporation, filed with the Foreign-Trade Zones Board (the Board) on January 18, 1985, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in the Louisiana Parishes of St. Charles, St. John the Baptist, and St. James, adjacent to the Grammercy Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Borad's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the Zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in the Parishes of St. Charles, St. John the Baptist, and St. James, Louisiana

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in port of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the South Louisiana Port Commission (the Grantee) has made application (filed January 18, 1985, Docket No. 2-85, 50 FR 3944) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at 3 sites in the Parishes of St. Charles, St. John the Baptist, and St. James, Louisiana, adjacent to the Grammercy Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 124 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the excutive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed thereto by its Chairman and Executive Officer at Washington, DC this 20th day of December 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 85-30900 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from the People's Republic of China ("PRC") is being, or is likely to be sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 21, 1986, and we will make ours on or before May 13, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition filed by the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. on behalf of the U.S. industry producing porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of this merchandise from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended ("the Act"), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from the PRC and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from the PRC is being, or is likely to be, sold in the United States at less than fair value. In the course of our investigation, we will determine whether the economy of the PRC is state-controlled to an extent that sales of such or similar merchandise in the home market or to third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by May 13, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedule of the United States Annotated* (*TSUSA*). Kitchenware, which is currently reported under item 654.0828 of the TSUSA, is not subject to this investigation.

United States Price and Foreign Market Value

United States price was derived from Customs FOB value per unit and per pound of porcelain-on-steel cooking ware from the PRC. Petitioners, alleging that the PRC is a state-controlled-economy country, derived foreign market value from information on the Customs values per unit and per pound for porcelain-on-steel cooking ware from Singapore and Thailand, in accordance with the provisions of 19 CFR 353.36(a)(8). Petitioners selected Sinagpore and Thailand as possible surrogate countries because they export the product named in the petition to the United States and because the Department has expressed a willingness to use them as surrogates for the PRC in past investigations. Based on their calculations using these figures, petitioners allege a dumping margin ranging from 95 percent to 710 percent if calculated on the basis of unit value, and from 58 percent to 112 percent if calculated on the basis of value per pound.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from the People's Republic of China materially injure, or threatening injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30921 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import, Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the Department of Commerce, we are initiating an antidumpting duty investigation to determined whether porcelain-on-steel cooking ware from Mexico is being, or is likely to be sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its

preliminary determination on or before January 21, 1986, and we will make ours on or before May 13, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition filed in proper form on behalf of the Porcelian-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. with respect to porcelain-on-steel cooking ware from Mexico. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from Mexico and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by May 13, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedule of the United States Annotated (TSUSA)*. Kitchenware, currently reported under item 654.0828 of the *TSUSA* is not subject to this investigation.

United States Price and Foreign Market Value

In its sales at less than fair value allegation, the petitioners based United States price on price quotations, FOB Nuevo Laredo, from the two possible respondents. Foreign market value is based on home market prices of the possible respondent, FOB factory. Based on the comparison of United States price and foreign market value, petitioners allege dumping margins ranging from ten percent to 131 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30923 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-508]

Porcelain-on-Steel Cooking Ware From Taiwan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Taiwan is being, or is likely to be sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 21, 1986, and we will make ours on or before May 13, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition filed on behalf of the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. with respect to porcelain-on-steel cooking ware from Taiwan. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of this merchandise are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold

in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination on or before May 13, 1986.

Scope of Investigation.

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedule of the United States Annotated (TSUSA)*. Kitchenware currently reported under item 654.0828 of the *TSUSA* is not subject to this investigation.

United States Price and Foreign Market Value

Petitioners based United States price on price quotations by Taiwanese exporters for sales to unrelated purchasers. Petitioners based foreign market value on both constructed value and, in the case of two companies with significant home market sales, on actual home market prices. Based on the comparison of actual home market prices and United States price, petitioners allege dumping margins ranging from 7 percent to 65 percent. Based on the comparison of the constructed value and United States price, petitioners allege dumping margins ranging from 21 percent to 70 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan materially injure, or threatening material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30922 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-853-509]

Initiation of Countervailing Duty Investigation; Porcelain-On-Steel Cooking Ware From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 21, 1986.

If our investigation proceeds normally, we will make a preliminary determination on or before February 27, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition in proper form filed by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry producing a like product.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from Taiwan and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 27, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0324 and 654.0827 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Kitchen ware, currently provided for under item 654.0828 of the *TSUSA*, is not subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the Taiwan authorities which allegedly confer subsidies on manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware. We are initiating an investigation on the following programs:

- Preferential Export Financing.
- Export Loss Reserves.
- Domestic Benefits under the Statute for Encouragement of Investment:

• Accelerated Depreciation and Tax Holidays;

• Duty Exemptions and Deferral on Imported Equipment;

• Preferential Long-Term Loans;

• Preferential Income Tax Rate Ceiling of 22 Percent.

We are not initiating an investigation on the following programs:

• Tax Exemptions for Export Sales.

• Tax Deduction for Investment in Production Equipment.

• Domestic Benefits under the Statute for Encouragement of Investment—Preferential Income Tax Rate Ceiling of 25 Percent.

These programs were determined not to confer subsidies in *Final Negative Countervailing Duty Determination: Welded Carbon Steel Line Pipe from Taiwan* (signed on December 23, 1985). Under the Act, the non-excessive remission of indirect taxes is not considered a subsidy. The rebate or exemption conferred by Tax Exemptions for Export Sales does not exceed the amount of tax borne by goods sold domestically. Therefore, this program does not confer countervailable benefits within the meaning of the countervailing duty law. The benefits conferred by Tax Deduction for Investment in Production Equipment, and Preferential Income Tax Rate Ceiling of 25 percent, are not limited to an industry or enterprise or group of industries or enterprises. Therefore, these programs do not confer countervailable benefits within the meaning of the countervailing duty law.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

This notice is published pursuant to section 702(C)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30925 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-05-M

[C-201-505]

Initiation of Countervailing Duty Investigation; Porcelain-On-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 21, 1986. If our investigation proceeds normally, we will make our preliminary determination on or before February 27, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition in proper form filed by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry producing a like product.

On April 23, 1985, the Office of the United States Trade Representative announced that Mexico is a "country under the Agreement", within the meaning of section 701(b)(2) of the Act. Consequently, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on procelain-on-steel cooking ware from Mexico and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 27, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States, Annotated.* Kitchen ware, currently reported under item 654.0828 of the *TSUSA*, is not subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the government of Mexico which allegedly confer subsidies on manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware. We are initiating an investigation on the following programs:

• Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX).
• Preferential Federal Tax Credits (CEPROFI).
• Fund for Industrial Development (FONEI).
• Energy Discounts and Rebates.
• Guarantee and Development Fund for Medium and Small Industries (FOGAIN).
• Article 94 Loans.
• Accelerated Depreciation Allowances.
• Import Duty Reductions and Exemptions.
• Preferential Vessel, Freight, Terminal and Insurance Benefits.
• Nacional Financiera, S.A., Loans (NAFINSA).
• National Fund for Industrial Development (FOMIN).
• Loans from the Mexican National Bank for Foreign Trade (BANCOMEXT).
• Export Credit Insurance.
• Trust For Industrial Parks, Cities, and Commercial Centers (FIDEIN).
• The Mexican Institute of Foreign Trade (IMCE).
• Port Facilities.
• New Exchange Risks Trust Fund Program (FICORCA).
• Preferential State Investment Incentives.

Although not specifically alleged by petitioners, we are initiating an investigation to ascertain whether the Mexican porcelain-on-steel cooking ware industry receives any benefits under the following programs:

• Foreign Currency Financing of Imports (PROFIDE).
• Government-Financed Technology Development.

Based on information available to the Department, we are also initiating an investigation on the following programs to determine whether they may constitute subsidies and whether they benefit the porcelain-on-steel cooking ware industry:

• Drawback Adjusted for Changes in Exchange Rates.
• Temporary Importation Scheme.

We are not initiating an investigation on the following program:

• National Preinvestment Fund for Studies and Projects (FONEP):

Petitioners allege that the Mexican government provides financing for economic, technical, and feasibility studies through FONEP, which is administered by the national development bank (NAFINSA). In the *Final Affirmative Countervailing Duty Determination: Bars and Shapes from Mexico* (49 FR 32889) (August 17, 1984), the Department ruled that such loans are available to all companies in Mexico and are not limited to a specific enterprise or industry, or group of enterprises or industries. Because petitioners have not presented any new information or alleged changed circumstances with respect to FONEP, we are not initiating on this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We also will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to statutory procedures.

This notice is published pursuant to section 702(C)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30924 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-502]

Certain Welded Carbon Steel Standard Pipe and Tube From India; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain welded carbon steel standard pipe and tube (standard pipe and tube) from India are being, or are likely to be, sold in the United States at less than fair value and that critical circumstances do not exist with respect to imports of this merchandise for two respondents (Gujarat and Zenith) and do exist for the third (TISCO). We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 10, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Terri A. Feldman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965 or (202) 377-0160.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that standard pipe and tube from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 10, 1986.

Case History

On July 16, 1985, we received a petition in proper form filed by the Standard Pipe and Tube Subcommittee of the Committee on Pipe and Tube Imports (CPTI), and by each of the member companies who produce standard pipe and tube. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 9, 1985 (50 FR 32244). On August 30, 1985, the ITC determined that there is a reasonable indication that imports of standard pipe and tube are materially injuring, or threatening material injury to, a U.S. industry (50 FR 37068).

On September 24, 1985, we received an amendment to the petition alleging critical circumstances.

On September 6, 1985, a questionnaire was presented to counsel for respondents. On October 21 and 22, 1985, Tata Iron & Steel Co., Ltd. (TISCO) and Zenith Steel Pipes & Industries, Ltd. (Zenith) responded to our questionnaire. On November 13, 1985, Gujarat Steel Tubes, Ltd. (Gujarat) presented a voluntary response to our questionnaire. Because the above-named companies accounted for at least 60 percent of exports of the merchandise to the United States during the period of investigation, we limited our investigation to them. We investigated virtually all sales of standard pipe and tube by these companies for the period of February 1, 1985, through July 31, 1985.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipe or tube produced to various ASTM specifications, most notably A-120, A-53 orA-135.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price based on purchase price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise as the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the packed F.O.B. or C&F price to unrelated customers in the United States. Where appropriate, we made deductions for foreign inland freight, ocean freight, government quality control and inspection charges, and clearing/forwarding charges. Where appropriate, we made additions for cash compensatory support (CCS) and duty drawback.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices. We used packed C&F and F.O.B. delivered prices to unrelated home market purchasers to determine the foreign market value. We made deductions, where appropriate, for freight charges and discounts. We made comparisons of such or similar merchandise based upon product subgroups selected by Department of Commerce industry experts and, where appropriate, made adjustments for differences in physical characteristics based upon data provided by the companies and Department of Commerce industry experts. In accordance with § 353.15 of the Commerce Regulations, we made circumstances of sale adjustments for differences in commissions and credit terms in the two markets for all respondents.

We disallowed claimed circumstances of sale adjustments by TISCO for the differences in advertising, technical services, legal expenses and bad debt. We disallowed these adjustments because they were not directly related to sales under consideration as required by § 353.15(a) of the Commerce Regulations. In addition, we disallowed an adjustment for the Import Price Reimbursement Scheme (IPRS) because there is no provison in the law for such an adjustment.

We made currency conversions in accordance with § 353.36(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Critical Circumstances

The petitioners alleged that imports of standard pipe and tube from India present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of standard pipe and tube from India in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries. We did not find that there was a history of dumping of standard pipe and tube in the United States or elsewhere. Therefore, we considered whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. For Zenith and Gujarat, we found the dumping margins too small to lead us to believe importers knew these firms were dumping. For TISCO, we found that the margin of dumping, 50.37%, was large enough so that importers knew or should have known that the products under investigation were being sold at less than fair value.

Since for Zenith and Gujarat, we did not find a history of dumping in the United States or elsewhere, nor did we find any reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, we did not need to consider whether there have been massive imports from Zenith and Gujarat over a relatively short period. Therefore, for the reasons described above, we preliminarily determine that critical circumstances do not exist with respect to standard pipe and tube from Zenith and Gujarat.

Since we found reason to believe our suspect that importers of pipe and tube from TISCO knew or should have known that this product was being sold at less than fair value, we considered the issue of massive imports from TICO. We generally consider the following concerning massive imports: (1) Recent trends in import penetration level; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels, import penetration ratios for standard pipe and tube from India for equal periods immediately preceding and following the filing of the petition, and seasonal factors. Based on our analysis of recent trade data, we find that imports of standard pipe and tube from India during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios. Therefore, we determine that critical circumstances exist with respect to imports of standard pipe and tube from TISCO, who accounted for the majority of the exports. We have notified the International Trade Commission (ITC) of this determination.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of standard pipe and tube from India produced by Zenith and Gujarat that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** With respect to entries of pipe and tube by TISCO, the suspension of liquidation and security requirement will apply to all unliquidated entries of the subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after the day, which is 90 days prior to the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until futher notice. The margins are as follows:

Weighted-average	Manufacturers/seller/exporters margin percentage
TISCO	50.37
Zenith	5.01
Gujarat	0.62
All other manufacturers/producers/exporters	27.29

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in or files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our perliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 or our regulations (19 CFR 353.47). If requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 17, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 10, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 23, 1985.

[FR Doc. 85-30874 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-501]

Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that certain welded carbon steel pipe and tube products (standard pipe and tube) from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 10, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 2030; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that standard pipe and tube from Yugoslavia is being, or is likely to be, sold in the United States at less than fair value, as provided for in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margin preliminarily found for the one company investigated is listed in the "Suspension of liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 10, 1986.

Case History

On July 16, 1985, we received a petition in proper form filed by the Standard Pipe and Tube Subcommittee and the Line Pipe Subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of their member companies who produce standard pipe and tube and line pipe. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We notified the ITC of our action and initiated such investigations on August 5, 1985 (50 FR 32246). On August 30, 1985, the ITC determined that there is a reasonable indication that imports of standard pipe and tube from Yugoslavia materially injure, or threaten material injury to, a United States industry. On August 30, 1985, the ITC also determined pursuant to section 733 (a) of the Act (19 U.S.C. 1673 b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the

United States is materially retarded, by reasons of imports from Yugoslavia of welded carbon steel line pipes and tubes (50 FR 37068).

On September 24, 1985 we received an amendment to the petition alleging critical circumstances.

On September 11, 1985, questionaires were sent via certified mail to 2 Yugoslavian companies, "FZC 11 Oktomvri" (Oktomvri) and "Zeljezara Sisak". We received a response from Zeljezara Sisak on November 13, 1985. In a letter dated November 27, 1985, the Department requested supplemental information from Zlejezara Sisak that was received on December 12. Imformation contained in the responses of Oktomvri established that this company did not have any sales to the United States during the period of investigation. Therefore, for purposes of this investigation, Zeljezara Sisak is the only Yugoslavian respondent.

Scope of Investigation

The products covered by this investigation are wedled carbon steel pipe and tube products with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53, or A-135.

We investigated sales of the subject merchandise during the period February 1, 1985 to July 31, 1985. Since Zeljezara Sisak accounts for virtually all exports of the merchandise from Yugoslavia, we limited our investigation to them.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value.

U.S. Price

As provided in section 772 of the Act, we used the purchase price of standard pipe and tube to represent the United States price for sales by the respondent because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price on the packed, f.o.b., Yugoslavian port price to unrelated purchasers in the United States. We made deductions for foreign inland freight.

Foreign Market Value

In accordance with section 733 of the Act, we used home market prices as the basis for foreign market value. We calculated the home market price on the basis of the f.o.b., packed price to unrelated purchasers. Home market prices were derived from home market price lists which the respondent stated were adhered to during the period of investigation.

In calculating foreign market value we made currency conversions to United States dollars in accordance with § 353.56(a)(1) of the regulations.

Verification

As provided on section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation. We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Preliminary Negative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of standard pipe and tube from Yugoslavia present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there were massive imports we generally consider the following: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for standard pipe and tube from Yugoslavia for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we find that import of standard pipe and tube from Yugoslavia during the period subsequent to the receipt of the petition have not been massive when compared to recent levels and import penetration ratios. Accordingly, we did not have to reach a determination with respect to a history of dumping or whether the importers knew or should have known that the exporter was selling the merchandise under investigation at less than fair value.

Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of standard pipe and tube from Yugoslavia.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of standard pipe and tube from Yugoslavia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Article VI, paragraph 5, of the General Agreement on Tariffs and Trade provides that "no product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization". This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, the level of export subsidies, as determined in the countervailing duty order on standard pipe and tube from Yugoslavia will be subtracted from the dumping margin for deposit or bonding purposes. The weighted-average margin is:

Manufacture/sellers/exporters	Weighted-average margin percentage
Zeljezara Sisak	31.24
All other manufacturers/producers/exporters	31.24

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential

information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with 1 § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on February 11, 1986 at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 4, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

December 23, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-30871 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-479-503]

Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products. The estimated net bounty or grant for the review period is 74.50 percent *ad valorem*.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain welded carbon steel pipe and tube products from Yugoslavia that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174, or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determinations and Orders

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers, manufacturers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products. For purposes of these investigations, the following programs are found to confer bounties or grants:

- Export Bonuses.
- Preferential Export Credit.
- Foreign Exchange Retention Scheme.

The estimated net bounty or grant for the review period for certain welded carbon steel pipe and tube products is 74.50 percent *ad valorem*.

Case History

On July 16, 1985, we received a petition in proper form from the standard pipe and tube subcommittee and the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of their member companies which produce standard pipe and tube and line pipe. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

Since Yugoslavia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to these investigations. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission (ITC) is not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S. industry (19 U.S.C. 1303 (a)(1), (b)).

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 5, 1985, we initiated such investigations (50 FR 32247). We stated that we expected to issue our preliminary determinations on or before October 9, 1985.

We presented detailed government and company questionnaires concerning the allegations to the government of Yugoslavia in Washington, DC on August 15, 1985, and we requested a response by September 16, 1985. We did not receive responses on September 16 from the government or any manufacturers, producers or exporters of the subject merchandise in Yugoslavia.

On October 2, 1985, we informed the government of Yugoslavia that if we did not receive responses to our questionnaires by October 16, 1985, we might have to use the best information available for our final determinations as required by § 355.39 of our regulations (19 CFR 355.33). On October 9, 1985, we made our preliminary affirmative determinations stating that benefits which constitute bounties or grants are being provided to producers, manufacturers or exporters in Yugoslavia of carbon steel pipe and tube products (50 FR 41921). Because we had not received a response from the Yugoslav government or companies, we based our preliminary determinations on the best information available, which was information supplied by the petitioners. On October 14, 1985, the government of Yugoslavia requested that the deadline for submitting a response be further extended. On October 18, 1985, we informed the government of Yugoslavia that we would consider for our final determinations complete responses if they were submitted to us in proper form, in Washington, DC, no later than November 1, 1985.

On November 8, 1985, the government of Yugoslavia submitted partial responses which included information from the government, Zeljezara Sisak Integrated Metallurgical Works (Sisak), and F.Z.C. 11 Oktomvri Works (11

Oktomvri). We thoroughly reviewed these partial responses and determined that none of the questions asked in the questionnaires was answered adequately. The government response failed to provide even the basic information requested in all countervailing duty questionnaires such as the names and addresses of all producers and exporters of the subject mechandise to the United States, value and volume of sales figures of the subject merchandise, the fiscal year for each company, Yugoslav tariff schedule numbers for the subject merchandise, and general banking and financial data relevant to the case. The government provided some general, but incomplete, information on five alleged subsidy programs. The government provided no response whatsoever to our questions on three other alleged subsidy programs.

The response of Sisak was also unusable because it omitted the figures for value of both total sales and export sales in 1984. These statistics are necessary for the Department to calculate the benefit from any potential subsidy received by the company. In addition, we cannot evaluate company responses without complete and detailed information from the government regarding alleged subsidies. The response of 11 Oktomvri provided virtually no information regarding our program-specific questions and, thus, cannot be considered as responsive to our questionnaire.

On November 22, 1985, we informed the government of Yugoslavia that the November 8 responses were inadequate and that, therefore, our final determinations would be based on the best information available, as required by § 355.39 of our regulations (19 CFR 355.39).

In our "Notice of Initiation" of these cases, we stated that we considered Yugoslavia to be a market economy for the purpose of initiation (50 FR 32247). We based our decision on information provided in the petition, as well as material gathered by us independent of the petition. Because the government of Yugoslavia has not submitted an adequate response, or made any arguments in other submissions that Yugoslavia is not a market economy, we determine that Yugoslavia is a market economy for the purposes of these investigations.

We initiated an investigation on line pipe, as defined in the "Scope of Investigations" section, based on information supplied by the petitioners that an importer has made an irrevocable offer of sale of line pipe for delivery in the United States in the second half of 1985 or the first quarter of 1986. The response of 11 Oktomvri indicates that the company has contracted to sell line pipe to the United States in 1985 and 1986. Therefore, on the basis of best information available, we determine that there is a "likelihood" of sale of line pipe within the meaning of section 701(a) of the Act and line pipe remains within the scope of these investigations.

Scope of Investigations

The products covered by these investigations are:

(1) Welded carbon steel pipe and tube with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120, A-53 or A-135; and

(2) Welded carbon steel line pipe with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the *TSUSA* under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API-5L or API-5LX.

Analysis of Programs

Because we did not receive sufficient responses to our questionnaires, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits based on the absence of adequate responses. The Department has no record of past countervailing duty investigations or administrative reviews involving Yugoslavia and, therefore, we are unable to include our own information in determining whether the benefits alleged in the petition are bounties or grants within the meaning of the countervailing duty law. We also sought and examined other sources of information on the Yugoslav economy and trade regime. This reseach did not yield any information sufficiently specific to the allegations to supplement or replace petitioners' estimates of benefits as as best information available. Therefore, as best information available, we are using petitioners' information regarding the countervailability and level of benefits of the alleged subsidy programs.

We are classifying those programs for which the petitioners provided no numerical estimates of benefits as "Programs For Which We Have No Information". We will investigate these programs in the administrative review of this case under section 751 of the Act. if such a review is requested.

I. Programs Determined to Confer Bounties or Grants

We determined, based on best information available, that bounties or grants are being provided to manufacturers, producers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products under the following programs:

A. Export Bonuses

Petitioners allege that export bonuses are paid to designated priority industries in Yugoslavia. These payments, which can be as high as 25 percent of the value of export sales, are bestowed on a company within a priority industry by Regional Committees for Foreign Economic Relations (CIFERs). According to information submitted by the petitioners, iron and steel was designated as a priority industry in the 1981-1985 national development plan. As best information available, we determine that the companies under investigation received bonuses on exports from the CIFERs in their regions. To determine the amount of the benefit conferred by this program, we assume that the highest rate of bonus quoted in the petition was provided on exports of the subject merchandise to the United States. On this basis, we determine an estimated net bounty or grant of 25.00 percent *ad valorem.*

B. Preferential Export Credit

Petitioners allege that exporters in Yugoslavia have access to short-term credit from the National Bank of Yugoslavia and long-term credit from the Yugoslav Bank for International Economic Cooperation at interest rates inconsistent with commercial considerations. According to information supplied in the petition, the short- and long-term commercial lending rates in July 1984 were 48 percent *per annum,* while the interest rate for export loans was between 27 and 42 percent *per annun.* As best information available, we determine that the companies under investigation financed 100 percent of their exports at the lowest rate possible, 27 percent. To calculate the benefit from this program, we took the difference between the commercial lending rate supplied in the petition, 48 percent per year, and the 27 percent annual rate. We thus determine an

estimated net bounty or grant of 21.00 percent *ad valorem*.

C. Foreign Exchange Retention Scheme

Petitioners allege that exporters of standard pipe and tube and line pipe in Yugoslavia benefit from a foreign exchange retention scheme which permits exporting companies to retain their foreign exchange earnings. According to information submitted in the petition, exporters that earn foreign exchange in excess of the amount they need to pay for imports are allowed to retain a certain amount for their own purposes and not turn it in to the government at the official exchange rate. Petitioners state that exporters may sell foreign exchange at a premium over the official exchange rate, thus receiving a benefit from the right to retain foreign exchange earned from export sales.

Petitioners further argue that this benefit confers an export bounty or grant because foreign exchange sold by exporters at a premium yields more dinars than importers pay to purchase the equivalent amount of foreign exchange for imports. Because we have not received an adequate response to our questionnaires in this case, and we have not been able to uncover any information on this program other than that supplied by the petitioners, we accept petitioners' characterization of this program. We have no way of knowing whether exporters in Yugoslavia do in fact have the ability to sell foreign exchange at a premium over the official exchange rate and whether this right would confer a bounty or grant. Therefore, as best information available, we determine that this program constitutes a bounty or grant to exporters of standard pipe and tube and line pipe in Yugoslavia. To calculate the benefit, we assume that the companies under investigation received a bounty or grant equal to the highest amount of benefit calculated by the World Bank in an analysis of the foreign exchange retention scheme provided by the petitioners. On this basis, we determine an estimated net bounty or grant of 28.50 percent *ad valorem*.

II. Programs for Which we Have no Information

Information regarding the level of benefits received under the following programs was not supplied by petitioners. We have also been unable to develop any information on the potential countervailability of these programs or on the level of benefits from any sources other than the petition. Therefore, we determine that we have no information from which to determine whether these programs are bounties or grants and, if so, how to quantify the possible benefits conferred by the following programs:

A. Export Credit Insurance

Petitioners allege that the Yugoslav Bank of International Economic Cooperation (YBIEC) provides export credit insurance to exporters at rates and on terms inadequate to cover its long-term operating costs. Since the respondents did not provide an adequate response in these investigations, and neither the petitioners nor the Department was able to find information upon which to estimate a benefit from this program, we cannot quantify the amount of any bounty or grant that may be received.

B. Income Tax Exemptions on Export Earnings

Petitioners allege that exporters of standard pipe and tube and line pipe may receive income tax exemptions on export earnings. We did not receive a usable response to our questionnaires in this case, and neither petitioners nor the Department was able to develop information on which to base a determination.

C. Import Duty Refunds and Duty Exemptions on Non-Physically Incorporated Imported Inputs

Petitioners allege that the government of Yugoslavia refunds import duties or permits duty-free importation of goods and services on inputs other than those physically incorporated in the final exported product. Because the respondents did not provide a sufficient response in this case and the petitioners were unable to provide information as to whether, or to what degree, the pipe and tube industry receives countervailable benefits under this program, we cannot determine whether this program provides a bounty or grant or quantify any estimated bounty or grant.

D. Preferential Credit for Priority Sector Development

Petitioners allege that ferrous metallurgy in the 1981–1985 national development plan is designated as a priority sector and, therefore, receives preferential access to investment funds. Petitioners further allege that other benefits may be available on preferential terms to encourage development. The respondents have not provided information about any benefits available to industries located in designated priority sectors. Neither the petitioners nor the Department was able to find any information regarding the level of benefits or potential countervailability of this program.

E. Loans to Firms in Less Developed Regions

Under the Yugoslav Law on Permanent Funds to Finance Underdeveloped Regions, federal funds are channelled to enterprises through regional governments. Petitioners allege that, given the priority attached to the steel industry, it is likely that the regional governments have provided low-interest loans to the steel industry to promote development in the less developed regions of the country. Because we have not received a complete response in this case, and petitioners did not provide any information on the amount of benefit conferred by this program, we do not have any information on which to quantify a bounty or grant.

Best Information Available

In accordance with section 776(b) of the Act, we used the best information available in making our final determinations.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 355.34 of our regulations (19 CFR 355.34). No written comments were received. We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 355.35 of our regulations (19 CFR 355.35). No hearing was requested.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determinations shall remain in effect until further notice (50 FR 41921). The estimated net bounty or grant for duty deposit purposes is 74.50 percent *ad valorem*. In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of certain welded carbon steel pipe and tube products from Yugoslavia which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 167d(d)).

December 23, 1985.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 85-30870 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-503]

Final Negative Countervailing Duty Determination; Welded Carbon Steel Line Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of welded carbon steel line pipe (line pipe) in Taiwan. The net subsidy is 0.02 percent *ad valorem.* This rate is *de minimis,* and therefore this determination is nagative. We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0189 (LaCivita) or 377-2830 (Martin).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that the following programs are countervailable:

- Preferential Export Financing
- Export Loss Reserves

We determine that not countervailable benefits for line pipe to be 0.02 percent *ad valorem.* Although we have determined these programs to be countervailable, the respondent received *de minimis* benefits during the review period. Therefore, we determine that no benefits which constitute subsidies within the meaning of secton 701 of the Tariff Act of 1930, as amended, are being provided to manufacturers, producers or exporters of line pipe in Taiwan.

Case History

On July 16, 1985, we received a petition in proper form filed by the Line Pipe Subcommittee of the Committee of Pipe and Tube Imports (CPTI) and each of its member companies who produce line pipe. In compliance with the filing requirements § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers or exporters of line pipe in Taiwan directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 5, 1985, we initiated such an investigation (50 FR 32751). We stated that we expected to issue a preliminary determination by October 19, 1985.

Since Taiwan is entitled to an injury determination under the secton 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On August 30, 1985, the ITC perliminarily determined that there is a reasonable indication that these imports materially injure a U.S. industry (50 FR 36159).

On August 15, 1985, we presented a questionnaire concerning the petitioners' allegations to the American Institute on Taiwan in Washington, DC. Responses to the questionnaire were received on September 20, 1985 and September 23, 1985.

There are two known producers of welded carbon steel line pipe in Taiwan, the Far East Machinery Company. Ltd. (FEMCO) and Kao Hsing Chang Iron and Steel Corporation (KHC). China Steel Corporation (China Steel) responded to the Department questionnaire concerning preferentially-priced inputs.

On the basis of information contained in these responses, we made a preliminary determination on October 9, 1985 (50 FR 41924). We verified the responses of the Taiwan authorities, KHC, FEMCO and China Steel in Taiwan from October 15, 1985, to November 5, 1985

At the request of both petitioners and respondents, we held a hearing on November 19, 1985, to allow the parties opportunities to address the issues arising in the investigation. Both petitioners and respondents filed briefs discussing these issues before and after the hearing.

Scope of the Investigation

The product covered by this investigation is welded carbon steel line pipe, with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thickness of not less than 0.065 inch, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3208 and 610.3209. This product is produced to various American Petroleum Institute (API) specifications for line pipe, most notably API-5L or API-5X.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaires submitted by the Taiwan authorities, FEMCO, KHC, China Steel, the verification, and the amended response submitted after verification, we determine the following:

I. Programs Determined To Be Countervailable

We determine that the following programs provide countervailable benefits to manufacturers, producers, or exporters of line pipe in Taiwan:

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters in possession of a letter of credit to apply for low-cost export loans covering up to 85 percent of the value of the export transaction. Export loans are arranged through authorized foreign-currency banks, which may apply for an interest-rate reduction from the Central Bank. Exporters settle the loan with foreign exchange within 180 days or pay an interest-rate penalty on the full amount of the loan.

The Central Bank sets the maximum and minimum interest rates for commercial lending in Taiwan. Export loans are set at rates equal to or below the minimum rates established for commercial lending.

FEMCO obtained export loans to finance exports of the products under investigation to the United States. Because these loans are contingent upon

export performance and provide funds to borrowers at interest rates lower than those available for other purposes, we determine that this program confers a benefit which constitutes an export subsidy.

To calculate the benefit, we compared the Central Bank's export-loan rate with its maximum short-term loan rate. We then multiplied the difference by the principal amount and allocated the benefit over the value of FEMCO's and KHC's 1984 exports of the products under investigation to the United States. KHC did not provide verifiable information with respect to their exports of line pipe to the U.S. Therefore, we used the best information available to arrive at KHC's portion of the denominator. The net subsidy is 0.002 percent *ad valorem*.

B. Export Loss Reserves

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively to compenate export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then settle the account and carry the reserve funds forward as taxable income for the next year. FEMCO and KHC received benefits from export loss reserves during the review period.

Because this program is contingent upon export sales, we determine that it confers a benefit which constitutes an export subsidy. To calculate the benefit received in 1984, we treated tax savings from the export loss reserve as a one-year interest-free loan received mid-1983 at the time the income tax forms were filed. We compared the interest-free rate with the maximum lending rate set by the Central Bank. We divided the benefit by the value of KHC's and FEMCO's total 1984 exports and found the net subsidy to be 0.02 percent *ad valorem*.

II. Programs Determined not to Confer Subsidies

We determine the following programs do not confer subsidies on the manufacturers, producers or exporters of line pipe in Taiwan:

A. Business Tax Exemptions for Export Sales

The authorities on Taiwan levy a business tax on selling goods, rendering services or other profit seeking activities within the territory of Taiwan. Article 29 of the SEI exempts export sales, which include sales to trading companies and to manufacturers for further processing before export, from the business tax. The amount of the exemption equals the amount of business tax due on each sale destined for export. Companies pay the business tax monthy and receive exemptions for export at that time. However, if the export remains unconfirmed at the time the taxes are due, or, if goods are sold to trading companies or to other manufacturers for further processing before export, companies initially report the sale as a domestic sale, then apply for the business tax exemptions at the time of export. Such exemptions take the form of a rebate of taxes paid. Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. We verified that the amount of the exemption or rebate is not greater than the amount of business tax due. Therefore, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

B. Stamp Tax Reductions

The authorities on Taiwan levy a stamp tax on sales invoices Article 33 of the SEI permits the reduction of the stamp tax from 0.4 percent to 0.1 percent for all invoices issued by a profit-seeking enterprise for transactions exempt from the business tax. The stamp tax reduction is less than the amount of stamp tax due on each sale destined for export. Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. Because we verified that the amount of the reduction is not greater than the amount of the stamp tax due, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

C. Preferential Prices for Raw Materials

Petitioner alleged that the Taiwan authorities direct China Steel Corporation (China Steel) to provide coil at preferential prices to exporters.

China Steel, a state-owned corporation and a supplier of pipe-and-tube inputs, maintains a two-tiered pricing policy. The higher first-tier price is applicable to domestic producers who manufacture goods for the Taiwan market. It is based on the landed, duty-paid price of imported hot-rolled coil. The lower second-tier price is offered to manufacturers who purchase coil to produce export products and is based on the landed, duty-free price of hot-rolled coil.

Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (*See. Final Neagative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea*, 47 FR 39549). Based on our examination of China Steel's second-tier coil prices to the pipe-and-tube producers under investigation and on world-market prices for coil, we found that China Steel's prices were at world-market levels. Therefore, we determine that China Steel's two-tiered pricing policy does not confer a countervailable benefit with the meaning of the countervailing duty law.

D. Preferential Income Tax Ceiling—25 Percent

Petitioner alleged that manufacturers, producers or exporters of line pipe in Taiwan benefit from a preferential income tax ceiling. Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent in corporate income taxes on income exceeding NT$500,000 rather than the 35 percent required by Taiwan's graduated corporate income tax law.

Article 15 benefits are available to all productive enterprises, defined in the SEI as stock companies engaged in manufacturing, handicrafts, mining, agriculture, forestry, fishery, animal husbandry, transportation, warehousing, public utilities, public facility construction and development, public housing construction, technical services, hotels and heavy machinery construction.

In prior cases, we found this program to be a subsidy based upon insufficient evidence that the program is non-specific. However, the evidence in this case indicates that these benefits are not limited to an industry or enterprise or group of industries or enterprises. Therefore, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

E. Tax Credit for Investment in Production Equipment

Under Article 10 of the SEI, productive enterprises may deduct from income tax payable an amount of up to 15 percent of the value of capital equipment purchased during the year. In the event that the amount of the tax credit exceeds the value of income tax

payable, the balance may be carried forward for up to four subsequent years.

Article 10 benefits are available to all productive enterprise defined above. In prior cases, we found this program to be a subsidy based upon insufficient evidence that the program is non-specific, However, the evidence in this case indicates that these benefits are not limited to an industry or enterprises or group of industries or enterprises. Therefore, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

III. Programs Determined Not To Be Used

We determine that the following programs are not used by the manufacturers, producers, or exporters of line pipe in Taiwan:

A. Preferential Income Tax Ceiling—22 Percent

Article 15 of the SEI also permits enterprises engaged in the basic metal production industry, heavy machinery industry, petrochemical industry or other important productive enterprises which conform with the needs for development of economic and national defense industries and are capital-intensive and/or technology-intensive in nature to use a marginal tax rate of no more than 22 percent. We verified that neither KHC nor FEMCO used the 22 percent tax ceiling. Therefore, we determine this program not to be used.

B. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI permits newly-established productive enterprises to select one of the following benefits: (1) A tax holiday of up to five years providing the company depreciates its assets according to Taiwan's Service Life of Fixed Assets; or (2) accelerated depreciation on the service life of machinery, equipment and buildings, construction facilities, and communication and transportation facilities. In addition, Article 6 permits expanding enterprises to select (1) a tax-holiday of up to four years on the income derived from increased capacity, if it depreciates its assets according to Taiwan's Service Life of Fixed Assets, or (2) a rapid depreciation of the newly purchased equipment beginning in the year in which the machines begin operation.

We verified that neither KHC nor FEMCO claimed accelerated depreciation or took a tax holiday during the period of review. Therefore, we determine this program not to be used.

C. Duty Exemptions and Deferral on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties in a series of installments beginning one year from the date of importation on selected machinery and equipment that is not manufactured domestically. In addition, qualified enterprises may be exempt from paying import duties on selected machinery and equipment which is used for the establishment or expansion of an approved project or for research and development.

We verified that neither KHC nor FEMCO recieved duty exemptions or deferrals. Therefore, we determine this program not to be used.

D. Preferential Long-Term Loans

Article 84 of the SEI permits the Executive Yuan to establish and administer a special development fund to promote investments of interest to national economic development. We vertified that neither KHC nor FEMCO used Article 84 financing in relations to the products under investigation. Therefore, we determine this program not to be used.

Petitioner's Comments

Comment 1: Petitioner argues that China Steel Corporation, a state-owned supplier of pipe-and-tube inputs, is able to offer a two-tiered pricing policy due to Taiwan's high tariff barrier. Under this policy, customers who produce line pipe for export pay lower prices for hot-rolled coil than those who produce line pipe for domestic consumption. Petitioner argues that this two-tiered pricing policy gives preferential treatment to exports because coil is sold to exporters at the lower-tier price.

DOC Position: We disagree. A two-tier pricing policy does not in itself confer and export subsidy. As we explained in our discussion of preferential pricing under the section of this notice entitled *Programs Determined Not to Confer Subsidies,* under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (*See, Final Negative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea,* 47 FR 39549). Based on our examination of China Steel's second-tier coil prices to the pipe-and-tube producers under investigation and on world-market prices for coil, we found that China Steel's prices were at world-market levels. Therefore, we determine that China Steel's two-tiered pricing policy does not confer a countervailable benefit.

Comment 2: Petitioner argues that China Steel Corporation, as a state-owned enterprise, is an "agency" of the authorities on Taiwan. Therefore, further directions from the authorities on Taiwan is not required to establish the presumption of government direction or control with respect to China Steel's two-tiered pricing policy.

DOC Position: We determine that the prices FEMCO and KHC paid for export-destined hot-rolled coil from China Steel were at world-market levels and, therefore, the issue of direction from the authorities on Taiwan is moot.

Comment 3: Petitioner argues that a subsidy provided by a private corporation is countervailable absent government action or direction.

DOC Position: We disagree. The "private" subsidies cited by petitioner were provided by private corporations who were administering funds levied and collected by the government on the government's behalf. *See. Final Affirmative Countervailing Duty Determination Prestressed Concrete Steel Wire from South Africa.* (47 FR 33310). Paragraph (d) of the Annex to the Subsidies Code stipulates that an export subsidy is conferred by the delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions *more favorable* than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters. (Emphasis added) We verified that the actual price FEMCO and KHC paid China Steel for hot-rolled coil was at world-market price levels.

Comment 4: Petitioner argues that the pertinent world-market price for determining whether China Steel's coil prices are preferential is the actual price domestic users of hot-rolled coil pay for imported coil used to produce line pipe.

DOC Position: We disagree. Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used on the production of export goods

constitutes a subsidy only if the preference lowers the price below "those commercially available on the world market to their exporters:" *i.e.*, below world-market levels. Accordingly, we compared the actual prices FEMCO and KHC paid China Steel to the actual prices FEMCO and KHC paid for imported coil as well as to the generally available world-market prices for coil, and determined that China Steel's prices were at world-market levels.

Comment 5: Petitioner argues that the subsidy resulting from preferential prices should be measured as the difference in price between the first- and second-tier price and not as the difference between the world-market price and the lower-tier price.

DOC Position: We disagree. See the Department's response to petitioner's first comment.

Comment 6: Petitioner agrees with the Department's preliminary determination that the export loss reserves and the tax exemption for export sales confer countervailable benefits within the meaning of the countervailing duty law.

DOC position: In our final determination, we found that the export loss reserves confer an export subsidy. However, at verification, we learned that the business tax and stamp tax are indirect taxes. We verified that the exemption, remission or reduction of these taxes on export sales is non-excessive. Therefore, as described in this notice, these programs do not provide countervailable benefits within the meaning of the countervailing duty law.

Respondents' Comments

Comment 1: Respondents argue that low-cost export financing loans which are not discounted through the Central Bank should not be included under the export financing program since they do not involve government participation.

DOC Position: We disagree. We verified that all of the export financing loans under consideration were discounted through the Central Bank and therefore included these loans in the export financing program.

Comment 2: Respondents state that none of the export financing loans involved the products under investigation exported to the United States.

DOC Position: We verified that one export financing loan covered exports of line pipe to the United States and included it in the export financing program.

Comment 3: Respondents claim that the export loss reserve, which is claimed as a tax exemption under Taiwan's corporate income tax law, operates as a one-year deferral of income. They argue that the benefit should be calculated by treating the tax savings from the exemption as a one-year interest-free loan.

DOC Position: We agree. However, we note that there is a two-year lag between the time an export loss reserve is established and the time the benefit is realized. The export loss reserves established in calendar year 1982 were claimed as exemptions on the tax forms filed in 1983. Under our methodolgy, the resulting tax savings are considered to be interest-free loans for a one year period beginning on the date the income tax forms were filed. Therefore, the interest benefits were realized in 1984.

Comment 4: Respondents argue that the business tax exemptions and stamp tax reductions provide non-excessive remissions of indirect taxes which are not countervailable within the meaning of the countervailing duty law.

DOC Position: We agree. See our comments in the body of the notice.

Comment 5: Respondents argue that the 25-percent income tax ceiling provision of Article 15 of the SEI is available to a variety of industries in Taiwan and is therefore not countervailable within the meaning of the law.

DOC Position: We agree.

Comment 6: Respondents claim that the investment tax credit provisions of Article 10 of the SEI are not limited to an industry or enterprise or a group of industries or enterprises.

DOC Position: We agree.

Comment 7: Respondents argue that the Department should calculate the value of total export sales of all products to all markets by adding the value of the "indirect exports" reported on the monthly business and stamp tax declarations to the value of exports reported in the questionnaire response. Respondents state that allocating benefits over total exports, without including indirect exports, overstates any benefits received by the respondent companies.

DOC Position: We disagree. We verified that the export sales figures reported in the questionnaire responses and the amended questionnaire responses were accurate and had already been included the above-mentioned indirect export sales.

Comment 8: Respondents argue that the prices China Steel charges for export-destined hot-rolled coil are not preferential since there is no government direction or control of China Steel's pricing policy. Respondents further argue that government ownership does not *per se* indicate government direction or control.

DOC Position: See the Department's response to petitioner's second comment.

Comment 9: Respondents argue that Japanese prices of coil should not be used as the prices with which China Steel's prices should be compared to determine if they are below world-market prices. Furthermore, they argue that the test as to whether or not there is preferential pricing does not depend on the prices actually paid by a company for alternate coil, but the price Taiwan exporters would have to pay on the world market for the input they used.

DOC Position: See petitioner's Comment 4 and the Department's response.

Comment 10: Respondents argue that if a subsidy is found with respect to the pricing issue, the measure of the subsidy should not be the difference between the first- and second-tier price, but the difference between the world-market price and the preferential price.

DOC Position: See petitioner's first comment and the Department's response.

Comment 11: Respondents argue that neither KHC nor FEMCO keep their records in such a fashion as to provide the value of the exports to the U.S. of the product under investigation.

DOC Position: The Department verified FEMCO's value of line pipe exports to the U.S. Because KHC did not provide verifiable information on the value of its line pipe exports to the U.S., we used Department statistics to calculate this value.

China Steel's Comments

Comment 1: China Steel asserts that the world-market price is the price available to customers in the position of the respondents, which in this investigation, is the price available to Southeast Asian coil users on the open world market.

DOC position: See petitioner's fourth comment and the Department's response.

Comment 2: China Steel argues that the appropriate price comparison for world-market-price analysis is between China Steel's base price for hot-rolled coil and the base price for hot-rolled coil offered by foreign suppliers.

DOC position: We disagree. In this case, the appropriate price comparison is between the final F.O.B. price offered by foreign suppliers for each grade, quality, and size of hot-rolled coil and between China Steel's second-tier ex-works price of the comparable grade, quality and size of hot-rolled coil.

Verification

In accordance with 776(a) of the Act, we conducted a verification of the information provided in the questionnaire response. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the companies producing and exporting the merchandise under investigation to the U.S.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A hearing was held on November 19, 1985. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Termination of Suspension of Liquidation

In accordance with this determination, and section 705(c)(2) we are directing the U.S. Customs Service to terminate suspension of liquidation on the products under investigation and to release any bond, or other security, and refund any cash deposit placed upon welded carbon steel standard pipe and tube from India as described in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

December 23, 1985.

[FR Doc. 85-30872 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-05-M

[C-533-503]

Final Negative Countervailing Duty Determination; Welded Carbon Steel Standard Pipe and Tube From India

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in India of welded carbon steel pipe and tube. The estimated net subsidy is *de minimis*, and therefore our final countervailing duty determination is negative. We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Betsy Killian, Loc Nguyen, or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1673, 377-0167, or 377-2830.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain countervailable benefits are being provided to one manufacturer/producer/exporter in India of welded carbon steel standard pipe and tube. For purposes of this investigation, the following program is found to confer a countervailable benefit:

- Packing Credit Program.

We determine the estimated net subsidy to be 0.42 percent *ad valorem* and hence *de minimis* for the one manufacturer/producer/exporter in India of welded carbon steel standard pipe and tube. The other two companies did not use this program and so the country-wide subsidy rate is also *de minimis*. Therefore, we reach a negative final countervailing duty determination because no countervailable benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in India of the products under investigation.

Case History

On July 16, 1985, we received a petition in proper form from the Standard Pipe and Tube Subcommittee of the Committee on Pipe and Tube Imports (CPTI) and each of its member companies which produce standard pipe and tube. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in India of welded carbon steel standard pipe and tube directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 5, 1985, we initiated such an investigation (50 FR 32249). We stated that we expected to issue a preliminary determination by October 9, 1985. On September 24, 1985, the petitioners alleged critical circumstances with respect to welded carbon steel standard pipe and tube from India.

Since India is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On August 30, 1985, the ITC determined that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of welded carbon steel standard pipe and tube from India (50 FR 37068).

On August 14, 1985, we presented a questionnaire concerning the petitioners' allegations to the government of India in Washington, DC. Responses to the questionnaire were received on September 26 and 27, and on October 4, 1985. There are three known producers/exporters of welded carbon steel standard pipe and tube in India: Zenith Steel Pipes and Industries, Ltd. (Zenith); Tata Iron and Steel Co., Ltd (TISCO); and Gujarat Steel Tubes, Ltd. (Gujarat). On the basis of the information contained in these responses, we made a preliminary determination on October 9, 1985 (50 FR 41926). We verified the responses of the government of India and the respondent companies from October 28 through November 8, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We received written views from interested parties and have taken them into consideration in this determination.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube, with an outside diameter of .375 inch or more, but not over 16 inches, of any well thicknes, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610,3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, mostly notably A-120, A-53 or A-135.

Analysis of Programs

For purposes of this determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaire, our verification and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined to Confer Countervailable Benefits

We determine that countervailable benefits are provided to one manufacturer/producer/exporter in India of welded carbon steel standard pipe and tube under the following program:

A. The Pack Credit Program

Under this program, the Reserve Bank of India, through commercial banks, provides pre-shipment credit to exporters for financing the purchase, processing or packing of goods. These credits may be received upon presentation of: (1) Letters of credit opened by an importer of goods outside India; (2) a confirmed and irrevocable order for export of goods from India; or (3) any other evidence of an order for an export from India having been placed with the exporter. In general, the loans are granted for a period of 90 to 290 days. The interest rates applicable to steel pipes and tubes during the review period were 12 percent for loans of up to 180 days and 14.5 percent for loans of 180 to 290 days. For purposes of this determination, we have used 18 percent as the national average interest rate for short-term loans in India in 1984. This benchmark rate was published in the Reserve Bank of India Bulletin and was used as the benchmark for both short-term "packing credit" loans bearing either of the two aforementioned interest rates.

Since packing credit financing is only available for use by exporters and the rates of interest charged are less than our benchwork, we determine that the provision of such financing provides a countervailable benefit.

Only one company received packing credit financing during the review period. The benefit provided under this program was determined by multiplying the interest rate differential between our benchmark and the interest rate paid by the company by the fraction of a year that each loan was outstanding, as well as by the principal amount of all packing credit loans received by the company for the subject merchandise exported to the United States during the review period. We then allocated the aggregate benefit over the company's value of exports of the subject merchandise to the United States. On this basis, we calculated an estimated net subsidy of 0.42 percent *ad valorem.*

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in India of welded carbon steel standard pipe and tube under the following program:

A. The Cash Compensatory Support Program (CCS)

The cash compensatory support program is designed to rebate indirect taxes upon exported merchandise. The rebates are paid as a percentage of the F.O.B. invoice price.

Under the Act, the non-excessive rebate of indirect taxes levied at the final stage, and of prior stage cumulated indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. In order to determine whether a cash payment upon export is a *bona fide* rebate of indirect taxes, we examine whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

We verified that the CCS Program satisfies these three criteria with respect to exports of the products under investigation and that the indirect taxes paid by the companies under investigation exceed the CCS rebate rate. Therefore, we determine that this program is not countervailable in this case.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in India of welded carbon steel standard pipe and tube did not use the following programs:

A. Import Replenishment Licenses (REPS)

Petitioners alleged that REPS are given to exporters in India both as an incentive and as a necessary condition for increased export activity. They also alleged that, although in theory the REPS were supposed to supply only necessary inputs for the exporter himself, these import licenses are actually negotiable and therefore can have a market value. Because these licenses have a market value, petitioners alleged, they may confer a countervailable benefit to the exporter.

We verified that the companies under investigation did not receive, utilize, or transfer REPS with respect to exports of the subject merchandise during the review period. Therefore, we determine that this program was not used.

B. Regional Benefits to New Facilities in Madhya Pradesh

Petitioners alleged that producers of the subject merchandise may be benefitting from certain regional development incentives in the state of Madhya Pradesh including: (1) Preferential power rates; (2) investment grants; (3) sales tax exemptions or deferrals; (4) feasibility study cost reimbursements; and (5) preferential water rates.

Since none of the companies under investigation nor any of their plants or factories is located in Madhya Pradesh, we determine that this program was not used.

Negative Determination of Critical Circumstances

On September 24, 1985, in an amendment to the petition, petitioners alleged that imports of welded carbon steel standard pipe and tube from India present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement; and (2) there have been massive imports of the subject merchandise over a relatively short period. The Department may find that "critical circumstances" exist only when there is an affirmative determination.

In this case, we preliminarily determined that the government of India conferred export subsidies on welded carbon steel standard pipe and tube and preliminarily determined that "critical circumstances" existed. However, we now determine the amount of the subsidy to be *de minimis* and, therefore, our final determination is negative. Because our final determination is negative, the issue of "critical circumstances" is moot.

Petitioners' Comments

Comment 1: Petitioners argue that in instances in which "critical circumstances" are alleged and in which the ITC makes a preliminary injury determination, the ITA should determine that "critical circumstances" exist based

on the ITC's preliminary determination regardless of whether or not imports have been cumulated. Petitioners further argue that the role of the ITA is to determine whether subsidies exist and to measure the amount of subsidies, and that it is not equipped to investigate the effects of imports on the domestic industry.

DOC Position: Since the final determination is negative, it is not necessary for the Department to determine if "critical circumstances" exist.

Comment 2: Petitioners allege that the central sales, the excise and the octroi indirect taxes are paid only on input items purchased domestically and that, on imported inputs, the importer pays only a countervailing excise duty (CVED) which is the equivalent of the sum of the aforementioned taxes and the customs duty.

DOC Position: This is not correct. We verified that the CVED is the equivalent of the excise tax only. It is not the equivalent of the sum of the customs duty and the excise, central sales and octroi taxes.

Comment 3: Petitioners allege that if a company imported hot-rolled coil and/or zinc, these input items would only be assessed the CVED tax. Thus, if the company receives an exemption from or drawback of the CVED upon exportation of goods manufactured from the imported inputs, the CVED must not be included in the Department's unrebated indirect tax calculations for purposes of determining whether or not the CCS is an excessive rebate.

DOC Position: The petitioners' allegation is incorrect. We verified that zinc was the only input item against which the CVED was levied during the review period. It was also the only input imported during the review period. The Department has determined that the CVED is an indirect tax which, in the case of zinc, was not fully rebated under the duty drawback scheme. Therefore, we included the unrefunded portion of the CVED in our indirect tax calculations in order to determine whether or not the CCS rebate was excessive.

Comment 4: Petitioners argue that it is possible that Gujarat and Zenith used nothing but domestic coil in 1984, the period of investigation; however, since in 1985 the two companies used imported coil for their exports (as respondents claim in the antidumping investigation of the same product), for duty deposit purposes, it must be determined that the products under investigation bear no indirect taxes and the CCS payments are excessive rebates.

DOC Position: We disagree. We verified that zinc is a "canalized" item, imported exclusively by the government in bulk through its Minerals and Metals Trading Company (MMTC). The MMTC then sells the zinc to the pipe and tube companies. We also verified that the indirect tax incidence on zinc as a percentage of the F.O.B. price of the products under investigation is well above the 5 percent CCS rebate rate. In addition, we verified that the companies paid indirect taxes on other physically incorporated inputs, such as steel sockets and rings, chemicals, paints and varnish, and packing materials. Therefore, hypothetically, even if hot-rolled coil were imported and no indirect tax were levied on it, the incidence of indirect tax on zinc and the other physically incorporated inputs would still exceed the 5 percent CCS rebate rate.

Comment 5: Petitioners argue that the tax paid by TISCO to the Steel Development Fund (SDF), a government-run program funded by steel producers, is recycled back to the steel company contributors and, to the extent that TISCO receives benefits from the SDF, it cannot use the contribution to offset the CCS rebates.

DOC Position: Since we verified that the indirect tax incidence on zinc and other physically incorporated inputs already exceeds the 5 percent CCS rebate rate, the issue of whether the SDF contribution should be taken into account in offsetting the CCS rebate is moot.

Respondents' Comments

Comment 1: Respondents argue that critical circumstances do not exist since there have not been massive imports from India of the products under investigation over a relatively short period of time and since these imports do not cause "serious prejudice" to the trade or production of the United States as required by Article 14, paragraph 3 of the Subsidies Code.

DOC Position: Since the final determination is negative, it is not necessary for the Department to determine if "critical circumstances" exist.

Verification

In accordance with section 776(a) of the Act, we verified all the data used in making our final determination. During verification we followed normal verification procedures, including meeting with government officials and inspection of documents and ledgers, and the tracing of information in the response to source documents, accounting ledgers and financial statements.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). Neither petitioners nor respondents requested a public hearing. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Termination of Suspension of Liquidation

In accordance with this determination and section 705(c)(2) we are directing the U.S. Customs Service to terminate suspension of liquidation on the products under investigation and to release any bond, or other security, and refund any cash deposit placed upon welded carbon steel standard pipe and tube from India as described in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with Section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

December 23, 1985.

[FR Doc. 85-30869 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-501]

Postponement of Final Antidumping Duty Determination; Offshore Platform Jackets and Piles From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On December 5, 1985, we received a request from one of the respondents in the antidumping duty investigation of offshore platform jackets and piles that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final

antidumping duty determination as to whether sales of offshore platform jackets and piles from Japan have been made at less than fair value until not later than March 31, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION: On May 15, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine wherther imports of offshore platform jackets and piles from Japan are being, or are likely to be sold at less than fair value (50 FR 20252). We issued our preliminary affirmative determination on November 15, 1985 (50 FR 48454). This notice stated that we would issue a final determination on or before January 29, 1986. On December 5, 1985, counsel for one of the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary detemination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly we grant the request and postpone our final detemination until not later than March 31, 1986.

The public hearing is also being postponed until 10:00 a.m. on February 13, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by February 6, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30875 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Availability of Evaluation Findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Mississippi, and Rhode Island Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate.

Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2) (A)-(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235 (telephone: 202/634-4245)

(Federal Domestic Assistance Catalog 11.419: Coastal Zone Management Program Administration)

Dated: December 13, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-30884 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-08-M

Intent to Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Maryland Coastal Management Program (CMP); Guam CMP; Northern Marianas Island CMP and Oregon CMP; and the Chesapeake Bay Interstate Allocation Award through March 31, 1986. These reviews will be conducted pursuant to section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA.

Coastal zone management is funded under CZMA section 306, and the Interstate Allocation Award Program is authorized by CZMA section 309. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, DC 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: December 13, 1985

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-30883 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intent To Grant Exclusive Patent License; The Upjohn Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Upjohn Company in Kalamazoo, Michigan, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "New Antineoplastic Platinum (IV) Complexes," U.S. Patent Application 6-585-111, filed March 1, 1984. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the attention of George Kudravetz, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-30847 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing a Change in Quota Category Requirement for Coats and Jackets Without Full Frontal Openings From Categories 359 and 659 to Categories 334, 335, 634 and 635

December 27, 1985.

Effective January 1, 1986 the Committee for the Implementation of Textile Agreements is changing the category requirement for visa and quota purposes for jackets without full frontal openings (pullover jackets) from Categories 359 and 659 to Categories 334, 335, 634, and 635. Pullover jackets without full frontal openings are being entered and later altered to add full frontal openings in circumvention of limits on coats and jackets. CITA has decided pending consultations with the major suppliers of these pullover jackets (Taiwan, Korea, Hong Kong and Thailand) to waive the requirement that these garments be charged to Categories 334, 335, 634 and 635 for visa and quota purposes for shipments imported on or before February 28, 1986. CITA reserves the right to charge these shipments previously waived exported on or after January 1, 1986 to Categories 334, 335, 634, and 635 following consultations with suppliers, as appropriate.

Importers having shipments of coats and jackets without full frontal openings in the TSUSA numbers listed below may obtain a waiver of the requirement for Categories 334, 335, 634 and 635 for goods imported on or before February 28, 1986 by addressing a request to:

Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, Washington, D.C. 20230, Attention: Waivers

The following information should be included:

Port of Entry (indicating whether airport or seaport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and TSUSA Number [1]
Entry Number or Bill of Lading Number
Country of Origin
Date of Exports
Exporter

[1] Note:

TSUSA Number	1985 category	1986 category
381.0418	359	334
381.0827	359	334
381.4332	359	334
381.6505	359	334
384.0436	359	335
384.0926	359	335
384.3432	359	335
384.5210	359	335
381.2835	659	634
381.3323	659	634
381.9222	659	634
381.9838	659	634
384.2207	659	635
384.2601	659	635
384.8672	659	635
384.9403	659	635

Information included in any request for a waiver is subject to Section 1001 of Title 181 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 27, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229.

Dear Mr. Commissioner: In order to facilitate the implementation of the U.S. bilateral textile/apparel program, I request that, effective on January 1, 1986, you require that coats and jackets without full frontal openings (currently classified in Categories 359 and 659), be visaed and charged as follows:

TSUSA Number	Textile category
381.0418	334
381.0827	334
381.4332	334
381.6505	334
384.0436	335
384.0926	335
384.3432	335
384.5210	335
381.2835	634
381.3323	634
381.9222	634
381.9838	634
384.2207	635
384.2601	635
384.8672	635
384.9403	635

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30944 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China Concerning Category 360 (Cotton Pillowcases)

December 26, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 2, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On November 29, 1985, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton pillowcases in Category 360, produced or manufactured in China and exported to the United States. A summary market

disruption statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the "Tariff Schedules of the United States Annotated (1985)."

Anyone wishing to comment or provide data or information regarding the treatment of Category 360 under the agreement with the People's Repulic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consulatation provision to limit its exports to the United States of this product during the ninety-day period which began on November 29, 1985 and extends through February 26, 1986 to 687,597 units.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve months following the ninety-day consultation period to 2,716,916 units (February 27, 1986–February 26, 1987).

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Category 360, exported during the ninety-day period at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limit established for Category 360 for the ninety-day period is exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the level (described above), defined in the agreement for the subsequent twelve-month period.

Supplementary Information

On December 28, 1984, a letter to the Commissioner of Customs was published in the **Federal Register** (49 FR 50432) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Category 360, which is not subject to a specific ceiling and for which a level may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of apparel products in Category 360, produced or manufactured in the People's Republic of China and exported during the indicated ninety-day period, in excess of the designated level.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 360—Pillowcases

November 1985.

Summary and Conclusions

U.S. imports of Category 360 from China totaled 1.1 million pillowcases (213,682 dozens) during the year ending September 1985. This level was 68 percent higher than the number imported during year-ending September 1984. China is the largest supplier of cotton pillowcases, accounting for 23 percent of total imports.

The sharp and substantial increase of low-valued imports of Category 360 from China is disrupting the U.S. market.

U.S. Production and Market Share

Domestic production which had declined from 1979 to 1982, but had begun to recover in 1983, failed to continue to increase with increased market demand. Production of cotton pillowcases declined 2 percent to 259,000 dozens in 1984. During the second quarter of 1985, production was down 55 percent below the first quarter of 1985 matching the same level as second quarter 1984.

The market for U.S. produced and imported pillowcases remained relatively stable from 1979 through 1982. During the following two years, the market showed considerable growth, increasing from 440,000 in 1982 to 522,000 in 1983 and 866,000 dozens in 1984. Despite the stable market for cotton pillowcases in the 1979–1982 period, U.S. producers lost market share, declining from 78 percent in 1979 to 51 percent in 1983. In 1984, the loss of market share for U.S. producers accelerated as imports expanded more rapidly than did the market. The U.S. producers' share of the market fell to 30 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of cotton pillowcases doubled from 1979 to 1981 and tripled from 1981 to 1984. Imports for the first nine months of 1985 were nearly twice as large as those a year earlier.

The ratio of imports to domestic production climbed sharply from 28.8 percent in 1979 to 97.7 percent in 1983. It rose to 234.4 percent in 1984 and probably will be higher in 1985 since imports were up substantially, 92 percent, during the first nine months of 1985.

Committee for the Implementation of Textile Agreements

December 26, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States, and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 2, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 360, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on November

29, 1985 and extends through February 26, 1986, in excess of 687,579 units.[1]

Textile products in Category 360 which have been exported to the United States prior to the first day of the indicated ninety-day period shall be subject to this directive.

Textile products in Category 360 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1984 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30899 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Exported From Pakistan Effective on January 1, 1986

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On March 9 and 11, 1982, the Governments of the United States and Pakistan signed a Bilateral Cotton Textile Agreement which establishes an aggregate limit for Categories 300-369, as a group and within the aggregate limit, specific limits for Categories 313, 315, 319, 331, 334, 335, 336, 338, 339, 340, 341, 347/348, 350, 363, and parts of 369, and a specific limit for part of Category 631, among others, during the agreement year which begins on January 1, 1986 and extends through December 31, 1986. It also provides consultation levels for categories, such as Categories 317, 320 and 369pt., which are not subject to specific limits and which may be adjusted during the agreement year. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the foregoing categories, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986 in excess of the designated limits. The aggregate limit has been adjusted to account for carryforward used during previous restraint periods. The limits for Category 331, 341, 347/348 and 369pt. have been adjusted to account for carryforward used in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 26, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986 in excess of the following restraint limits:

Category	12-mo restraint limit
300-369	235,123,446 yd.[2] equivalent.
313	94,267,621 yd.[2]
315	55,047,189 yd.[2]
317	6,512,000 yd.[2]
319	18,491,698 yd.[2]
320	8,000,000 yd.[2]
331	605,214 doz. pairs.
334	36,271 doz.
335	41,059 doz.
336	122,504 doz.
338	2,808,274 doz.
339	610,494 doz.
340	131,080 doz.
341	213,939 doz.
347/348	278,391 doz.
350	19,784 doz.
363	24,695,648 numbers.
369 pt.[1]	6,673,739 lb.
369 pt.[2]	2,168,006 lb.
631 pt.[3]	424,000 doz. pairs.

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

[2] In Category 369, only T.S.U.S.A. numbers 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

[3] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550, 704.9000.

In carrying out this directive entries of cotton and man-made fiber textile products in the foregoing categories, produced or manufactured in Pakistan, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter with the exceptions noted below.

Merchandise exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 in Categories 331, and 369pt.[1] shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption in the following amounts during each month of the January through May 1985 period:

Category	Amount to be entered per month
331	121,043 doz pairs.
369pt.[1]	1,334,748 lb.

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

Merchandise entered in 1986 in the foregoing categories, exported during the restraint periods which ended on December 31, 1985, plus goods exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, shall not together exceed

[1] The level has not been adjusted to reflect any imports exported after November 28, 1985.

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

the limits established for such goods during the latter twelve-month period.

The 1986 limits are subject to adjustment according to the terms of the bilateral agreement of March 9 and 11, 1982, between the Governments of the United States and Pakistan, which provide, in part, that: (1) within the aggregate limit, specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryforward and carryover; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.533(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 85-30867 Filed 12-30-85 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On December 2, 1985 a notice was published in the **Federal Register** (50 FR 49438) which established staged entry periods for man-made fiber textile products in Category 639, produced or manufactured in Thailand and imported during the thirty-day periods which began on December 2, 1985 and extend through May 1, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 26, 1985.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended between the Governments of the United States and Thailand, I request that, effective on January 1, 1986, you cancel that portion of the directive of November 27, 1985 concerning staged entry for man-made fiber textile products in Category 639, produced or manufactured in Thailand and exported during the eleven-month period which began on January 1, 1985 and extended through November 30, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5. U.S.C. (a) (1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30868 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Education Intergovernmental Advisory Council; Meeting

AGENCY: Intergovernmental Advisory Council on Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 21, 1986.

ADDRESS: 200 L Street, NW., Room 555, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jacqueline E. McGregor, Executive Director, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street, SW., Washington, DC 20202, (202) 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the Council is open to the public. The meeting is scheduled from 1:30 pm to 4:00 pm on January 21.

The proposed agenda:

Plan for IACE Networking conference on job training and retraining March 6-7, 1986

Effect of Gram-Rudman on Federal Programs

Departmental Support for IACE

Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education 300 7th Street, SW., Room 513, Washington, DC. Signed at Washington, DC on December 26, 1985.

Jacqueline E. McGregor,

Executive Director, Intergovernmental Advisory Council on Education.

[FR Doc. 85-30876 Filed 12-30-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP85-133-002 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

December 20, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-133-002]

In Docket No. CP85-133-002, ANR Pipeline Company (Petitioner), 500 Renaissance Center, Detroit, Michigan 48243, requested specific certificate authorization to continue an amended transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under section 311 of the Natural Gas Policy Act of 1978. Petitioner was eligible for

"grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Petitioner has, however, indicated that it desires the Commission to process this separate request under the standard Section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on September 18, 1985, Petitioner filed in Docket No. CP85-133-002 a petition to amend the order issued February 26, 1985, in Docket No. CP85-133-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas from additional receipt points and a change in the contract demand volume, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP85-133-000 it received authorization to transport up to 2,500 Mcf of natural gas per day on a firm basis for Michigan Consolidated Gas Company (MichCon) from Newaygo County, Michigan, to Mecosta County, Michigan.

Petitioner proposes to add the Wolverine Jansma 1-29 and Jennings Hudson 1-35 wells in Newaygo County as additional receipt points for the transportation. Petitioner further proposes that the transportation contract demand be increased to 12,000 Mcf of gas per day.

Petitioner further requests authorization to add points of receipt and/or delivery to the transportation service and to report such changes in an annual tariff sheet filing. Petitioner also requests authorization to reduce the contract demand pursuant to the redetermination provision of amendment to the transportation agreement with MichCon, to no less than 1,000 Mcf per day, if mutually agreed to by Petitioner and MichCon.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP85-328-000]

In Docket No. CP85-328-000, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on March 4, 1985, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP85-328-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Natural on an interruptible, best-efforts basis up to 8,000 Mcf of natural gas per day and such further volumes as Applicant agrees to accept, pursuant to a gas transportation agreement dated November 12, 1984. Applicant submits that Natural is purchasing gas produced from Main Pass Block 77, offshore Louisiana. It is stated that Natural would transport or cause the transportation of this gas from offshore Louisiana to the point of receipt at the interconnection of Applicant's and Sea Robin Pipeline Company's facilities located in Vermilion Parish, Louisiana. Applicant states that it would receive Natural's volumes of gas for transportation at the point of receipt and redeliver thermally equivalent volumes to Natural, by displacement, either at the tailgate of Texaco Inc.'s Henry processing plant, located in Vermilion Parish, Louisiana (Henry point of delivery) or at existing Measuring Station No. 426 connecting the facilities of Applicant and Natural in Cameron Parish, Louisiana (Cameron point of delivery). Deliveries would be made at the Cameron point of delivery only when deliveries cannot be made at the Henry point of delivery, it is stated. Applicant states that the volumes delivered would be reduced to reflect the retainage of 1.2 percent of the total volumes of gas received at the point of receipt for Natural's *pro rata* share of gas used as fuel and unaccounted-for volumes.

It is stated that Natural would pay Applicant 6.20 cents per Mcf for gas received at the point of receipt for transportation to the Henry point of delivery and would pay Applicant 8.56 cents per Mcf for gas received at the point of receipt for transportation to the Cameron point of delivery.

Applicant submits that the transportation service commenced on January 4, 1985, pursuant to authorization granted in Docket No. CP80-105 in Docket No. ST85-456-000 and that the service would continue in effect for a period of eight years from the date of initial receipt of gas and from year to year thereafter.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Locust Ridge Gas Company

[Docket No. CP85-728-000]

In Docket No. CP85-728-000, Locust Ridge Gas Company (Applicant), 3400 West Marshall Avenue, Suite 201, Longview, Texas 75608, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on July 22, 1985, Applicant filed in Docket No. CP85-728-000 application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 6,750 Mcf of natural gas per day for Southern on an interruptible basis. Applicant would receive the gas from Southern in Jefferson County, Mississippi, and transport and deliver it to ANR Pipeline Company in Tensas Parish, Louisiana. Applicant proposes to

charge Southern 45.34 cent per million Btu for the transportation service.

It is claimed that the proposed transportation service would provide Southern with a means of transporting an additional supply of gas without the construction of duplicative facilities.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-615-000]

In Docket No. CP85-615-000, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Northern has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on June 14, 1985, Northern filed in Docket No. CP85-615-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport, on a firm basis for the account of Tennessee, a maximum daily quantity of 20,000 Mcf of gas produced from Matagorda Island Blocks (MAT) 711 and 712, offshore Texas. It is stated that Northern would accept such volumes for Tennessee's account at the interconnection in MAT 713 of the jointly-owned lateral pipeline facilities of Northern and Tennessee, which connect the MAT 712 production platform and the jointly-owned pipeline facilities of Northern, Southern Natural Gas Company, Natural Gas Pipeline Company of America, Florida Gas Transmission Company and Transcontinental Gas Pipe Line Corporation known as the 758 Lateral. It is further stated that Northern would redeliver thermally equivalent volumes for Tennessee's account to Houston Pipe Line Company (HPL) in Refugio County, Texes, for further transportation. Additionally, it is asserted that Northern would transport on a best-efforts basis volumes in excess of the maximum daily quantity (MDQ) that are delivered by Tennessee in MAT 713.

Northern proposes to charge Tennessee a cost of service based monthly transportation charge (MTC). It is explained that the agreement provides for an MTC of $132,240 for the firm service and 21.75 cents per Mcf of gas delivered in excess of the MDQ. It is further explained that since the agreement was executed, compression was installed on Matagrada Offshore Pipeline System (MOPS) pursuant to Commission order issued in Docket No. CP83-186-002 and Northern has filed, in Docket No. CP85-247-000 for authorization to acquire Transco's ownership interest in the 758 Lateral. Northern proposes to charge Tennessee an MTC, based on an expanded MOPS, of $76,548 per month for the firm service and 12.59 cents per Mcf for overrun service. The proposed service, which it is indicated commenced August 31, 1984, on a best efforts basis pursuant to Part 284 of the Commission's Regulations, would continue for a primary term of eight years and from year to year thereafter.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Sea Robin Pipeline Company

[Docket No. CP85-412-000]

In Docket No. CP85-412-000 Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Sea Robin has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on April 3, 1985, Sea Robin filed in Docket No. CP85-412-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 87 Mcf of natural gas per day for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin proposes to transport up to 87,000 Mcf of natural gas per day for Southern from the East Cameron area, offshore Louisiana, to Erath, Louisiana. It is stated that the transportation service would continue for five years from the date of first delivery after receipt of the requested authorization. It is stated that the transportation service commenced February 8, 1984, in Docket No. ST84-623-000 pursuant to Order No. 60.

It is indicated that Sea Robin would charge Southern a monthly demand charge and a commodity charge for the gas transported, pursuant to Sen Robin's FERC Gas Traiff, Original Volume No. 1, Sheet No. 4-A (currently $3.86 and 73 cents per Mcf, respectively). Sea Robin states that existing facilities would be used for the transportation service and that Sea Robin's other customers would not be adversely affected.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Sea Robin Pipeline Company

[Docket Nos. CP76-428-002 and CP76-428-003]

In Docket Nos. CP76-428-002 and CP76-428-003, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Sea Robin has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on April 9, 1985 and April 17, 1985, Sea Robin filed in Docket No. CP76-428-002, and Docket No. CP76-428-003, respectively, petitions to amend the order issued February 12, 1977, in Docket No. CP76-428 pursuant to section 7(c) of the Natural Gas Act so as to authorize the designation of a new receipt point and an additional transportation redelivery point to United Gas Pipe Line Company (United), all as more fully described in the petitions to amend which are on file with the Commission and open to public inspection.

Sea Robin states that it is authorized to provide transportation service for United for the transportation and redelivery of United's gas purchased from certain offshore Louisiana delivery points. Sea Robin further states that it is authorized to redeliver United's gas at the terminus of Sea Robin's system onshore near Erath, Vermilion Parish, Louisiana, into the facilities of United. Sea Robin also states that the transportation agreement between United and Sea Robin dated June 1, 1976, has been amended on March 13, 1984, and December 5, 1984, to provide for a new redelivery point at the inlet side of the measuring station of Faustina Pipeline Company located at the onshore terminus of the Sea Robin system and a new receipt point at South Marsh Island Area Block 127, offshore Louisiana.

No other changes are proposed by the transportation agreements.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP85-825-000]

In Docket No. CP85-825-000, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the applications filed in the referenced in docket is being renoticed.

Take notice that on August 26, 1985, Applicant, filed in Docket No. CP85-825-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Columbia Gas Transmission Corporation (Columbia) and Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Columbia and Texas Gas purchased separately from Texaco Inc. and Amoco Production Company, produced from the B and C production platforms in Block 273, Eugene Island area, offshore Louisiana. Applicant proposes to transport on an interruptible basis by means of its existing faciities up to 1 billion Btu per day for both Columbia and Texas Gas, or such greater quantities as Applicant may accept from time to time. Applicant states that Columbia and Texas Gas would each deliver its gas to Applicant for transportation at the inlet of Applicant's existing facilities located on the Eugene Island Block 260 B production plantform. Applicant would redeliver to Columbia and Texas Gas an equivalent quantity of gas at the existing subsea point of interconnection between the 10-inch pipeline facilities of Applicant and the 24-inch pipeline facilities of Sea Robin Pipeline Company located in Eugene Island Block 273, less Columbia's and Texas Gas' separate *pro rata* shares of gas used as fuel, company-used gas and unaccounted-for gas losses, and less their *pro rata* share of gas lost or vented during transportation for any reason except gross negligence on the part of Applicant. Applicant further states that Columbia and Texas Gas have each agreed to pay Applicant a transportation rate of 24.7 cents per million Btu.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket no. CP82-276-008]

In Docket No. CP82-276-008, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmington, Alabama 35202-2563 requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Southern has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on August 7, 1985, Southern filed in Docket No. CP82-276-008 a petition to amend the Commission's order issued July 15, 1982, in Docket No. CP82-276-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transporation of natural gas, from a new source of gas supply from offshore Louisiana, for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By Commission order issued July 15, 1982, in Docket No. CP82-276-000, Southern was authorized, among other things, to transport up to 45 billion Btu equivalent of natural gas per day for Transco from Mississippi Canyon Area Blocks 150, 151, 194 and 195, (Block 194 Field) offshore Louisiana, to an interconnection of Transco's facilities and Southern's 20-inch Duck Lake-Franklinton Pipeline in Livingston Parish, Louisiana. Southern rendered the subject transportation pursuant to an agreement dated February 24, 1982. By an amendment, dated November 9, 1984, to the agreement, Southern states it has agreed to transport gas purchased by Transco from Mississippi Canyon Area Block 20 in addition to the gas produced from the Block 194 Field. It is asserted that the receipt points and the redelivery points, the quantity of gas transported and the rate charged for the transportation service would remain unchanged as originally set forth in the original gas transportation agreement.

Southern states that it currently transports Block 20 gas for Transco under the terms of a letter agreement dated November 9, 1984, pursuant to Southern's blanket certificate issued April 16, 1980, in Docket No. CP80-219-000. The self-implementing transportation service was reported to the Commission in Docket No. ST85-1218-000.

By the instant petition, Southern requests the Commission amend its order in Docket No. CP82-276-000, by authorizing the transportation of this

new gas supply source, from Block 20 offshore, Louisiana, to be included in the gas volumes presently being transported for Transco.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-530-000]

In Docket No. CP85-530-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Tennessee has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on May 21, 1985, Tennessee filed in Docket No. CP85-530-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it has agreed to receive, on an interruptible basis, up to 2,000 Mcf of natural gas per day from a point of receipt located in Main Pass Block 69, offshore Louisiana. Tennessee would transport and deliver a thermally equivalent quantity less volumes for Tennessee's fuel and use and lost and unaccounted-for gas to a point of interconnection near Kinder, Allen Parish, Louisiana (Fords).

It is stated that in accordance with the transportation agreement, Texas Eastern would pay Tennessee a volume charge equal to the product of 15.80 cents mutiplied by the total volume in Mcf of gas delivered by Tennessee for the account of Texas Eastern during the month. Tennessee states that it would charge a minimum monthly bill which would consist of the greater of the volume charge of 15.08 cents multiplied by the total volume in Mcf of gas delivered during the month or a volume charge of 15.80 cents multiplied by the minimum bill volume, which would consist of the number of days in said month, mutliplied by 66⅔ percent of the transportation quantity; provided that the minimum bill volume would be reduced by the volumes, if any, tendered by Texas Eastern and not taken by Tennessee, and would be reduced by the volumes retained for Tennessee's system fuel and uses.

In addition, Texas Eastern would provide to Tennessee, at no cost to Tennessee, 2 percent of the volumes received by Tennessee at the point of receipt for Tennessee's system fuel and uses and gas lost and unaccounted for.

Tennessee states that it is currently transporting natural gas for Texas Eastern pursuant to the provisions of Section 284.221 of the Commission's Regulations and Tennessee's Order No. 60 blanket certificate issued February 21, 1980, in Docket No. CP80-132. Tennessee also states that reports of this transaction have been filed by Tennessee in Docket No. ST85-545.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-586-000]

In Docket No. CP85-586-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) P.O. Box 2511, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Tennessee has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on June 6, 1985, Tennessee filed in Docket No. CP85-586-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to render an interruptible transportation service of up to 65,000 Mcf of natural gas per day for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to receive, at the onshore terminus of Tennessee's and Columbia Gulf Transmission Company's (Columbia Gulf) jointly-owned Project South Pass 77 facilities in Plaquemines Parish, Louisiana, up to 65,000 Mcf of natural gas for transportation and delivery to any or all of the following existing points: (1) An interconnection of Tennessee and Natural near Chalkey, Cameron Parish, Louisiana; (2) an interconnection of Natural and the tail gate of Mobil Oil Corporation's (Mobil) Cameron Meadows Gas Processing Plant, Cameron Parish, Louisiana; (3) an interconnection of Trunkline Gas Company and Tennessee near Kinder, Jefferson Davis Parish, Louisiana; (4) an interconnection of Natural and Tennessee in Wharton County, Texas; and (5) an interconnection of Natural and the tailgate of Mobil's LaGloria Gas Processing Plant, Jim Wells County, Texas. The Ysclosky Processing Plant, St. Bernard Parish, Louisiana, would be the point of delivery for plant volume reduction (PVR) if any of the gas transported must be processed.

Tennessee states that it is presently transporting the subject gas for Natural pursuant to Section 284.221 of the Commission's Regulations and Tennessee's blanket certificate issued February 21, 1980, in Docket no. CP80-132. Reports of the transportation have been filed by Tennessee in Docket No. ST85-364-000.

Pursuant to the terms of the transportation agreement dated March 1, 1984, as amended January 24, 1985. Tennessee proposes to charge Natural

(1) A volume charge of 16.61 cents for gas delivered at Chalkey 17.85 cents for deliveries at Cameron Meadows, 14.86 cents for deliveries at Kinder, 30.12 cents for deliveries at Wharton County and 38.13 cents for deliveries at LaGloria.

(2) A PVR charge of 6.38 cents per Mcf for the PVR for deliveries at the Ysclosky plant.

(3) A minimum monthly bill consisting of a volume charge of 16.61 cents times the minimum bill volume multiplied by 66.66 percent of the quantity of gas transported as adjusted.

It is stated that in addition, Natural would provide Tennessee a daily volume of gas for fuel and unaccounted-for gas lost as follows: 1.2 percent for

PVR gas, 1.91 percent of deliveries at Chalkey, Cameron Meadows and Kinder and 2.58 percent for deliveries at Wharton County and LaGloria.

Tennessee alleges the proposed service would benefit Natural since it would provide a means of attaching an offshore reserve of gas without the construction of costly duplicative pipeline facilities. Natural advises it would use the gas to maintain long-term reserve and deliverability base to assure future customer service.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-7-000]

In Docket No. CP86-7-000, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, requested specific certificate authorization to continue a transportaton service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on October 2, 1985, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP86-7-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on an interruptible basis for Southern up to the thermal equivalent of 10,000 Mcf of natural gas per day, pursuant to a transportation agreement dated July 1, 1985. Applicant states that Southern would purchase such gas from Elf Aquitaine, Inc., successor to Texas Gulf, Inc., in Brazos area, South Addition, Block A-47. Applicant states that it would normally receive all such quantities at the terminus of its Central Texas Gathering System (CTGS) near its compressor station No. 30 in Wharton County, Texas, following transportation by Southern through its own capacity in the looping on such system known as Project Central Texas Loop (PCTL). However, should the combination of Southern's Block A-47 quantities and other Southern gas moving through PCTL exceed Southern's capacity, then Applicant would receive excess Block A-47 quantities into its CTGS at Block A-47, it is explained.

Applicant further states that it would deliver quantities thermally equivalent to those received at either of the above points, less a percentage for gas lost and unaccounted for and fuel, to Trunkline Gas Company (Trunkline) for the account of Southern at the existing interconnection between Applicant and Trunkline near Katy, Waller County, Texas.

Initially, Applicant states, it would charge 4.3 center per dt equivalent of gas for the transportation of quantities received at the terminus of its CTGS and 12.4 cents per dt equivalent for the transportation of quantities received at Block A-47. Applicant would also retain, initially, 6 percent of all quantities received for transportation to compensate for compressor fuel and line-loss make up and, in the case of Block A-47 receipts, would retain fuel gas for dehydration at the CTGS Markham plant in Matagorda County, Texas, based on Southern's proportional share of all fuel gas used in dehydration there.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation; United Gas Pipe Line Company

[Docket No. CP85-492-000]

In Docket No. CP85-492-000, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under their Order No. 60 blanket certificates and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Transco and United have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on May 7, 1985, Transco and United filed in Docket No. CP85-492-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas and for permission and approval to abandon an existing transportation service all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to exchange up to a maximum daily quantity of 15,000 Mcf of natural gas. Applicants state that a portion of the gas reserves underlying Eugene Island (EI) Block 57, offshore Louisiana is committed to Transco by a gas purchase agreement with Amerada Hess Corporation and that a portion of the gas reserves underlying High Island Blocks 110, 111, 137 and 138 (HI Block 111 Field), offshore Texas, is committed to United by a gas purchase agreement with Texaco Producing Inc. As proposed, Transco would receive United's natural gas at HI Block 111 and United would receive equivalent quantities on behalf of Transco at EI Block 32. Applicants propose that any imbalances would be eliminated at existing interconnections located (1) at Starks in Calacsieu Parish, Louisiana; (2) in Victoria County, Texas; (3) at Johnson's Bayou in Cameron Parish, Louisiana; (4) at Gibson in Terrebonne Parish, Louisiana; and (5) at any other mutually agreeable points. Applicants state that the exchange agreement would remain in force for five years and would be continued year to year thereafter and that neither company would assess a transportation charge for the proposed service.

Applicants also request that Transco be granted authorization to abandon the transporation service currently provided for United pursuant to Transco's Rate Schedule X-164. Under this service, Transco was authorized by the Commission's August 8, 1978, order in Docket No. CP78-212 (4 FERC § 61,130) to transport on a firm basis up to 30,000 Mcf per day of United's gas produced from the HI Block 111 field and deliver equivalent quantities to United in Victoria County, Texas. As part of the exchange agreement, Applicants agreed to terminate this transportation service, it is stated.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

13. Transcontinental Gas Pipe Line Corporation; ANR Pipeline Company

[Docket No. CP79-3-017]

In Docket No. CP79-3-017, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243 (both companies hereinafter sometimes collectively called Petitioners) requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under their Order No. 60 blanket certificates and were eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Petitioners have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on May 6, 1985, Petitioners filed in Docket No. CP79-3-017 a petition to amend the order issued April 4, 1979, in Docket No. CP79-3, as amended, pursuant to section 7 of the Natural Gas Act, so as to authorize ANR to transport all gas made available by Transco at its Mayfield West field, Beckham County, Oklahoma, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued April 4, 1979, as amended, they were granted authorization to transport and exchange natural gas in accordance with the provisions of a gas transportation and exchange agreement, as amended (agreement).

Petitioners state that pursuant to the terms of the agreement, Transco delivers or causes to be delivered to ANR natural gas from certain wells located in the Mayfield West field, Beckham County, Oklahoma, which wells are specifically set out in Article I of the agreement. ANR redelivers thermally equivalent exchange volumes to Transco at the points of redelivery identified in Article V of the agreement.

Petitioners state that pursuant to a similar provision in Article II of the agreement, ANR delivers gas to Transco at receipt points in Jefferson Davis and Covington Counties, Mississippi, and Transco agrees to take receipt of additional gas which ANR is purchasing from East Cameron Block 38, offshore Louisiana, ANR being responsible for having such gas delivered to Transco at a point of interconnection between the Vermilion 22 pipeline (jointly owned by Transco, Florida Gas Transmission Company and Sea Robin Pipeline Company) with Transco's Central Louisiana gathering system at Pecan Island, Vermilion Parish, Louisiana (East Cameron 38 point of receipt). Transco redelivers thermally equivalent exchange volumes to ANR at the points of redelivery identified in Article V of the agreement.

It is stated that Petitioners use their best efforts to keep in balance the cumulative quantities of gas exchanged under the agreement, and any imbalance of exchange deliveries is eliminated by an appropriate adjustment of gas deliveries at the redelivery point located at the tailgate of Mobil Oil Corporation's Cameron Meadows processing plant located in Cameron Parish, Louisiana, where both Transco and ANR take gas deliveries from others. It is also stated that to the extent that volumes of gas which Transco receives in Mississippi and at the East Cameron 38 point of receipt are in excess of the volumes which ANR receives, Transco would transport these excess volumes, by displacement, to ANR at the points of redelivery.

Petitioners further state that Transco has obtained the right to purchase from Texaco, Inc. quantities of gas from the Green Estate No. 2 Well and the Ellis No. 3-33 Well in the Mayfield West field. Also, by letter amendment dated August 20, 1984, Petitioners added to Article I of the agreement such additional wells from which ANR would receive gas from Transco. By the subject petition, Petitioners request that the certificate issued in Docket No. CP79-3, as amended, be further amended to authorize ANR to transport all gas purchased by Transco from the Green Estate No. 2 Well and the Ellis No. 3-33 Well in Mayfield West field.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Trunkline Gas Company

[Docket No. CP85-563-000]

In Docket No. CP85-563-000, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Trunkline has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on June 4, 1985 (Applicant), filed in Docket No. CP85-563-000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Southern dated January 23, 1985, Applicant has agreed to transport up to 2,000 Mcf of gas per day on behalf of Southern. Applicant states that it would receive gas for Southern's account at existing points of interconnection with Texas Eastern Gas Pipeline Company (Texas Eastern) in Allen and Beauregard Parishes, Louisiana. It is indicated that Texas Eastern is presently transporting gas for Southern pursuant to Part 284 of the Commission's Regulations under Docket No. ST85-666 from West Cameron Block 250, offshore Louisiana, to receipt points mentioned. Applicant explains that it would redeliver gas to Southern at a point of interconnection with Southern in St. Mary Parish, Louisiana and that Southern would pay a monthly demand charge of $2,400.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

15. Trunkline Gas Company

[Docket Nos. CP85-167-000 and CP85-167-001]

In Docket Nos. CP85-167-000 and CP85-167-001, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a

transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under section 311 of the Natural Gas Policy Act, and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. United has, however, indicated that it desires the Commission to process this separate request under the standard Section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on December 12, 1984, Trunkline filed in Docket No. CP85-167-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 50,000 Mcf of natural gas per day for Louisiana Industrial Gas Supply System (LIGS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Take notice that on April 15, 1985, Trunkline filed in Docket No. CP85-167-001 pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas on behalf of LIGS, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Trunkline proposes to implement the terms of a transportation agreement between Trunkline and LIGS dated July 12, 1984, whereby Trunkline has agreed to transport, on an interruptible basis, up to 50,000 Mcf per day of natural gas for LIGS. Trunkline proposes a transportation charge of 3.79 cents per Mcf. Trunkline states that it would receive gas for LIG's account at a point of receipt in Cameron Parish, Louisiana, and redeliver it at a point of interconnection with LIGS in St. Mary Parish, Louisiana.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

16. Trunkline Gas Company

[Docket No. CP85-208-000]

In Docket No. CP85-208-000, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under section 311 of the Natural Gas Policy Act and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulaged by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on January 7, 1985, Applicant filed in Docket No. CP85-208-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Bridgeline-Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Bridgeline dated August 28, 1984, Applicant states it has agreed to transport up to 120,000 Mcf of gas per day on behalf of Bridgeline in the first year with annual contract reductions through the term. Applicant explains it would receive gas for Bridgeline's account at points of receipt in West Cameron Blocks 536 and 565, offshore Louisiana, using its allocated capacity in the system of Stingray Pipeline Company. Applicant states it would redeliver the gas for Bridgeline's account at points of interconnection with Riverway Gas Pipeline Company in St. Mary Parish, Louisiana, Columbia Gulf Transmission Company in St. Mary Parish, Louisiana, and ANR Pipeline at the superior Lowry plant in Cameron Parish Louisiana. For this transportation service Bridgeline would pay $5.38 for firm volumes. Applicant states that the gas to be transported would be purchased by Bridgeline from Texaco Inc. in West Cameron Blocks 536-565, offshore Louisiana.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP85-809-000]

In Docket No. CP85-809-000, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. United has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order No. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket in being renoticed.

Take notice that on August 21, 1985, United filed in Docket No. CP85-809-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement between the parties dated February 14, 1984, United proposes the transportation of up to 60,000 Mcf of natural gas per day attributable to production in East Cameron Area Block 240, offshore Louisiana, on behalf of Southern. It is stated that the gas would be delivered to Applicant at the outlet side of Sea Robin Pipeline Company's (Sea Robin) measuring station at or near the onshore terminus of Sea Robin's existing pipeline system near Erath, Vermilion Parish, Louisiana. Applicant states that it would redeliver equivalent quantities of gas to Southern at the existing point of interconnection at Southern's Shadyside compressor station near Bayou Sale, St. Mary Parish, Louisiana, and/or Perryville, Ouachita Parish, Louisiana, and/or the outlet side of Applicant's measuring station at the existing interconnection between Southern's 20-inch crossover in St. Martin Parish, Louisiana (south Section 28 redelivery point).

It is asserted that for each Mcf of natural gas redelivered at the aforesaid redelivery points, except the South Section 28 redelivery point, Applicant would charge Southern an amount equal to Applicant's Southern or Northern Zone rate in effect from time to time, as applicable, less cost for company-used

gas. Applicant states that effective July 1, 1985, the rates in Applicant's Northern Zone is 37.79 cents per Mcf and in Applicant's Southern Zone is 26.18 cents per Mcf excluding cost of company-used gas.

It is further explained that Applicant and Southern are parties to an exchange agreement dated July 1, 1985, as amended, which provides, *inter alia*, for the exchange of gas by Southern and Applicant at various delivery points, including the South Section 28 redelivery point, on a fee free basis. Based on the exchange agreement, Applicant would not charge a rate to Southern for volumes delivered to Southern at the South Section 28 delivery point.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North capitol Street, N.E., Washington, DC 20426, a motion to intervene or protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30918 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-206-000 et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

December 23, 1985.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-206-000]

Take notice that Arizona Public Service Company, on December 6, 1985, tendered for filing Amendment No. 1 to the Agreement for Transmission Service for Delivery of Public Service Company of New Mexico's Palo Verde Entitlement between Arizona Public Service Company (APS) and Public Service Company of New Mexico (PNM), executed November 4, 1985.

APS requests a waiver so that the Agreement will become effective November 4, 1985.

Copies of this filing have been served upon the Arizona Corporation Commission and upon PNM.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket No. ER86-45-000]

Take notice that, on December 16, 1985, Northeast Utilities Service Company, as agent for Connecticut Light and Power Company, submitted for filing materials supplementing its filing in this docket. The materials provide clarification of the investment return shown on page 7 of Appendix A of the contract in the subject docket.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER86-178-000]

Take notice that on December 5, 1985 Central Hudson Gas & Electric Corporation (CHG&E) filed as a rate schedule an executed agreement dated October 1, 1985 between CHG&E and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for Transmission of Capacity and Energy by CHG&E for O&R between CHG&E's 69 Kv. transmission interconnection with New York State Electric & Gas Corporation's (NYSEG) West Woodbourne Substation and CHG&E's 115 Kv. interconnection with O&R at O&R's Sugarloaf Substation.

The rate schedule provides for a monthly transmission charge of $1.00 per megawatt hour of Energy received from NYSEG for O&R's account at NYSEG's West Woodbourne Substation for delivery to O&R's Sugarloaf Substation.

CHG&E states that copies of the subject filing were served upon O&R.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Light Company

[Docket No. ER86-129-000]

Take notice that on December 11, 1985, Central Illinois Light Company (CILCO) tendered for filing proposed amendments to its filing of November 1, 1985 of rate changes for full-requirements service to the Villages of Riverton and Chatham, Illinois. CILCO requests waiver of the Commission's notice requirements to permit the filing to become effective on January 1, 1986 as originally requested.

The increase to Riverton reflects a settlement agreement between CILCO and Riverton which provides for a phase-in through the end of 1990.

The original filing stated that CILCO was unable to obtain a settlement with Chatham and that no phase-in is proposed as to it. However, Chatham has not opposed the filing, and therefore the Company states that it is uncontested.

The original filing stated that the total increase to Chatham and Riverton does not exceed $200,000 based upon actual billing data for twelve months ending September 30, 1985.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER86-149-000]

Take notice that on December 9, 1985, the Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales Agreement (the Agreement) between the Green Mountain Power Corporation (GMP) and CVPS. The Agreement, dated January 16, 1984, provides for the sale of energy (a Transaction) from the CVPS system to GMP and the purchase by GMP of energy from the CVPS system.

Copies of the filing were served upon the respective jurisdictional customers

of the parties hereto, as well as the Vermont Public Service Board. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

CVPS states that in order to permit GMP to achieve the mutual benefits of this Agreement, it requests that the Commission, pursuant to § 35.11 of its regulations, waive the sixty-day notice period and permit the rate schedule filed herewith to become effective on January 16, 1984. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, according to CVPS, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e. their respective systems will be compelled to operate at less than optimum efficiency.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER86-150-000]

Take notice that, on December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 84, Supplement Number 6. KCPL states that it is filing this notice of cancellation because Kansas Electric Power Cooperative has given notice to KCPL that it wishes to terminate its Amoco delivery point.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this document.

7. Kansas City Power & Light Company

[Docket No. ER86-151-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 57. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this document.

8. Kansas City Power & Light Company

[Docket No. ER86-152-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 29. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER86-153-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 56, Supplement Number 20. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER86-154-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 75. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this document.

11. Kansas City Power & Light Company

[Docket No. ER86-155-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 56, Supplement Number 21. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER86-165-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 2, and an associated Capacity Exchange Service provided to the City of Independence, Missouri—service Schedule H-MPA-1 (KCPL Rate Schedule FPC No. 56). KCPL states that the rates for the service covered by the above-mentioned schedule are negotiated rates based upon KCPL's capacity and energy rates associated with the Montrose 2 generating unit.

KCPL also states that it is filing an initial rate schedule for Transmission Service, service Schedule I-MPA; and an initial rate schedule for Load Regulation and Energy Displacement Service, service Schedule J-MPA for service provided to the City of Independence, Missouri. KCPL states that the rates for the services covered in the above mentioned rate schedule are similar to rates previously approved by the FERC.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Maine Electric Power Company

[Docket No. ER86-207-000]

Take notice that Maine Electric Power Company (MEPCE), on December 9, 1985, tendered for filing a rate schedule with Maine Public Service Company (MPSC) providing for the transmission of thirty (30) megawatts of electric energy from the New Brunswick Electric Power Commission over MEPCO's transmission lines to Central Maine Power Company (CMP) under MEPCO's existing filed tariff for such service.

MEPCO states that it is anticipated that this service will produce revenues of $163,980, based on the twelve month period following the initiation of service.

Copies of the filing were served on MPSC and the Maine Public Utilities Commission.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER86-210-000]

Take notice that, On December 11, 1985, the New England Power Pool (NEPOOL) filed an Agreement Amending the New England Power Pool Agreement (AMENDMENT), dated as of August 15, 1985, which modifies the provisions of the New England Power Pool Agreement, dated as of September 1, 1971, and amended by seventeen amendments, the most recent of which was dated as of October 1, 1983, and as proposed to be amended by an amendment dated as of August 1, 1985.

The NEPOOL Executive Committee states thas the AMENDMENT amends the definition of "Incremental Costs" in § 15.17 of the NEPOOL Agreement. The purpose of the AMENDMENT is to clarify the treatment of savings resulting from the receipt of energy or Spinning Reserve or Ready Reserve service received pursuant to arrangements entered into under § 12.10 of the NEPOOL Agreement (including purchases from Hydro-Quebec), and to ensure that savings from such transactions are properly reflected in, and distributed through, the pool Savings Fund. Pursuant to § 35.11 of the Commission's Regulations (18 CFR 35.11), the NEPOOL Executive Committee has requested that the Commission waive prior notice requirements and permit the AMENDMENT to become effective on the date specified in the AMENDMENT, December 1, 1985.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER86-211-000]

Take notice that on December 11, 1985, the new England Power Pool (NEPOOL) filed an Agreement Amending the New England Power Pool Agreement (AMENDMENT), dated as of August 1, 1985, which modifies the provisions of the New England Power Pool Agreement, dated as of September 1, 1971, and amended by seventeen amendments, the most recent of which was dated as of October 1, 1983.

The NEPOOL Executive Committee states that the AMENDMENT gives the NEPOOL Operations Committee authority to adopt rules governing the treatment, for pool purposes, of power purchases by NEPOOL participants from small power production facilities or qualifying cogeneration facilities as defined in section 201 of the Public Utility Regulatory Policies Act of 1978. The NEPOOL Executive Committee further states that the AMENDMENT was adopted in order to clarify treatment of such power purchases by NEPOOL Participants in the determination of Participant's System Capability, and energy and Spinning Reserve and Ready Reserve service. Pursuant to § 35.11 of the Commission's Regulations (18 CFR 35.11), the NEPOOL Executive Committee has requested that the Commission waive prior notice requirements and permit the AMENDMENT to become effective on the date specified in the AMENDMENT, November 1, 1985.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER86-105-000]

Take notice that on December 6, 1985 Virginia Electric and Power Company (VEPCO) tendered a supplement to its earlier filing of a revised rate for transmission service contained in a contract between VEPCO and the Southeastern Power Administration (SEPA). VEPCO requests an effective date of December 31, 1985 and, therefore, requests waiver of the notice requirements.

VEPCO states that the increase in the transmission service charge is necessary to place the charge on a compensatory basis.

Copies of the revised rate were served upon SEPA and upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Power Company

[Docket No. ER86-203-000]

Take notice that on December 5, 1985 American Electric Power Service Corporation (AEP) filed on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operating subsidiary, Modification No. 7 dated August 30, 1985 to the Operating Agreement dated December 1, 1985 between the Toledo Edison Company (Toledo) and OPCO.

Section 1 of Modification No. 7 increased the transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour when OPCO is the supplying party. Section 2 revises the provisions for Economy Energy by adding a 3.75 miles per kilowatthour minimum to OPCO's provisions for the transmission of Economy Energy. Section 4 of this Modification updates the transmission provisions for Non-Displacement Power and Energy by adding a 2.75 mills per kilowatthour demand charge when OPCO is the supplying party and a 2.00 mills per kilowatthour demand charge when Toledo is the supplying party.

AEP requests that this Modification become effective in two parts, allowing the 2.75 mills per kilowatthour transmission rate for Non-Displacement Power and Energy to become effective as of September 23, 1985 and the remainder of this Modification to become effective November 30, 1985. These effective dates would update OPCO's rates with Toledo to levels in effect between OPCO and other interconnected electric utility systems for the time periods specified allowing OPCO to charge similar rates for similar services.

Copies of this filling were served upon Toledo and the Public Utilities Commission of Ohio.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30919 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9134-000 et al.]

Applications Filed With the Commission; Hydroelectric Applications (D&D Stauffer et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Conduit Exemption.

b. Project No.: P-9134-000.

c. Date Filed: April 26, 1985.

d. Applicant: D&D Stauffer.

e. Name of Project: Dry Creek.

f. Location: On an irrigation conduit between Dry and Wet Creeks in Butte County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Bruce R. Gravette, Forgren—Perkins Engineering, 350 North 2nd East, Rexburg, ID 83440.

i. Comment Date: January 21, 1985.

j. Description of Project: The proposed project would utilize an irrigation conduit that is under construction and would consist of a powerhouse containing one generating unit having a capacity of 3.6 MW and an average annual generation of 17.7 GWh.

k. *Purpose of Exemption*—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

2 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 9140-000.

c. Date Filed: April 29, 1985.

d. Applicant: Charles F. Heimerdinger.

e. Name of Project: Elizabethtown.

f. Location: Branch Stream in Essex County, New York.

g. Filed Pursuant to: Energy Security Act of 1980 section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Charles F. Heimerdinger, 27 Rome Avenue, Apt. 2B, Bedford Hills, NY 10507.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed 4-foot-wide, 5-foot-high, 40-foot-long intake structure; (2) a 20-inch-diameter, 500-foot-long penstock at water surface elevation 740 feet m.s.l.; (3) a proposed powerhouse containing a generating unit with a rated capacity of 100 kW; and (4) a proposed 100-foot-long transmission line tying into the existing New York State Electric and Gas Corporation System. The Applicant estimates a 400,000 kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protests the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

3 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8627-000.

c. Date Filed: July 18, 1985.

d. Applicant: City of Ithaca.

e. Name of Project: Van Natta.

f. Location: Six Mile Creek in Tompkins County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C., 2705 and 2708 as amended.

h. Contact Person: Mr. John C. Gutenberger, Mayor, City of Ithaca, City Hall, 108 East Green Street, Ithaca, New York 14850.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 142-foot-long, reinforced concrete gravity dam; (2) an existing reservoir with a normal water surface area of 2.3 acres, a storage capacity of 8.6 acre-feet and a normal water surface elevation of 502.5 feet m.s.l.; (3) an existing intake structure; (4) a new 58-foot-long, 8-foot-diameter brick-lined, concrete-capped penstock; (5) a new 67-foot-long, 4-foot-diameter steel penstock; (6) an existing powerhouse containing one new generating unit with a capacity of 400 kW; (7) a new transmission line, 110 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,425,000 kWh. The existing dam is owned by the City of Ithaca.

k. Purpose of Project: Project power would be sold to the New York State Electric and Gas Company

l. This notice also consists of the following standard paragraphs A3, A9, B, C, and D3a.

m. Purpose of Exemption; An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

4 a. Type of Application: Exemption (5MW or less).

b. Project No.: 9437-000.

c. Date Filed: September 6, 1985.

d. Applicant: Mr. John Neerhout, Jr.

e. Name of Project: Yellowjacket Electric Power Project.

f. Location: On Yellowjacket Creek in Sonoma County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended).*

h. Contact Person: Mr. John Neerhout, Jr., c/o Yellowjacket Ranch, 16865 Highway 128, Calistoga, CA 94515.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would be located on lands owned by the Applicant and would consist of: (1) An existing concrete dam, 10 feet high and 30 feet long; (2) a reservoir having minimal pondage; (3) an existing outlet works and a pipeline/penstock, 8 inches in diameter and 3,700 feet long; (4) an existing powerhouse to contain a new turbine-generator unit rated at 70 kW and operating under a 600-foot head; (5) a tailrace returning flow to Yellowjacket Creek; (6) a new 12-kV transmission line, 1,800 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 312,000 kWh.

k. Purpose of Project: Project energy would be sold to the Pacific Gas & Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

5a. Type of Application: Exemption from Licensing (5MW or Less).

b. Project No.: 6367-002.

c. Date Filed: November 28, 1984.

d. Applicant: Western Hydro Electric, Incorporated.

e. Name of Project: Jefferson Creek.

f. Location: On Jefferson Creek in Mason County, Washington near the town of Eldon within the Olympic National Forest.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708).

h. Contact Person:

Mr. Donald J. White, President, Western Hydro Electric, Incorporated, 4702 Hillside Drive, Provo, UT 84601;

Mr. Wayne Gibbs, J-U-B Engineers, Inc., 250 S. Beechwood Ave., Boise, ID 83709.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 74-foot-long intake structure located along the bank of the creek at approximate elevation 1,040 feet; (2) a 66-inch-diameter, 3,200-foot-long steel buried pipeline; (3) a 66-inch-diameter, 300-foot-long penstock; (4) a powerhouse containing three generating units with a combined capacity of 1.45 MW operating under a head of 185 feet; (5) a tailrace discharging flows back into the creek; (6) a 6-mile-long, 12.5-kV transmission line tying into an existing line; and (7) a 2,500-foot-long access road.

This application has been accepted for filing as of May 25, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Company et. al., FERC ¶61,061, issued July 18, 1984.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6a. Type of Application: Minor License.

b. Project No: 9246-000.

c. Date Filed: May 28, 1985.

d. Applicant: John C. Simmons.

e. Name of Project: Argenta.

f. Location: On Lake Fork of the Gunnison River, near Lake City, in Hinsdale County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John C. Simmons, Mr. Kenneth T. Meredith, P.O. Box 582, Lake City, CO 81235, (303) 944-2760.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An existing natural rock diversion located on Lake Fork of the Gunnison River, immediately upstream of Argenta Falls, at elevation 8,910 feet msl; (2) an existing headgate; (3) a 4-foot-high, 12-foot-wide, 200-foot-long flume; (4) an 8-

by 12- by 16-foot surge tank; (5) a 4-foot-high, 10-foot-wide, 75-foot-long steel penstock; (6) a 20 feet by 26 feet powerhouse, located below Argenta Falls, containing two 750 kW crossflow turbine-generator units and producing an estimated average annual generation of 4.43 GWh; (7) a short tailrace; and, (8) a 200-foot-long, 14.4-kV transmission line to interconnect the project to an existing Gunnison County Electric Association line. The project would be located entirely on private lands. Project power would be sold to Colorado-Ute Electric Association. Applicant estimates total project cost at $1 million.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

l. An exemption from licensing for the Argenta Project No. 6923 was issued to John C. Simmons on June 3, 1983.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9482-000.

c. Date Filed: September 25, 1985.

d. Applicant: Wisconsin Creek Limited Partership.

e. Name of Project: Wisconsin-Noble Hydro Project.

f. Location: On Wisconsin Creek and Noble Fork in the Beaverhead National Forest near Sheridan, Madison County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Rhett Hurless, Water Engineering, Inc., P.O. Box 3474, Bozeman, MT 59772.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) Two 3-foot-high diversion dams at elevation 6,800 feet, one on Wisconsin Creek and one on Noble Fork; (2) two 6,000-foot penstocks, one from the Wisconsin Creek diversion and one from the Noble Fork diversion; (3) a powerhouse containing one generating unit with a rated capacity of 663 kW; and (4) approximately one-quarter mile of transmission line. Applicant estimates the average annual energy production to be 2.5 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: P-9452-000.

c. Date Filed: September 12, 1985.

Applicant: Anita Kay Hardy, Barbara J. Harker, and Earl M. Hardy.

e. Name of Project: Hardy Box Canyon.

f. Location: On Box Canyon Creek, a tributary to the Snake River near Wendell, Gooding County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Earl M. Hardy, 1301 Vista Street, Boise, ID 83705.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 3,195 feet; (2) a 1,800-foot-long, 96-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 1,011 kW; and (4) a 3,000-foot-long transmission line. Applicant estimates the average annual energy production to be 8,437,509 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $34,100. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to area power companies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9412-000.

c. Date Filed: August 20, 1985.

d. Applicant: Middle Fork Ditch Hydro Partners.

e. Name of Project: Middle Fork Ditch Hydroelectric Project.

f. Location: On Middle Fork Mokulmne River, near the town of Wilseyville, in Calaveras County, California Sections 12, 13, 14 & 23 of T6N, R13E, MDB&M Sections 7, 8 & 18 of T6N, R14E, MDB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, CA 95660.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 4-foot-high diversion structure at elevation 2,775 feet; (2) an existing 6-foot-wide, 4-foot-deep, 3.8-mile-long ditch; (3) a 6-foot-wide, 4-foot-deep, 5,000-foot-long ditch; (4) a 36-inch-diameter, 1,900-foot-long penstock; (5) a powerhouse with a total installed capacity of 1,200 kW operating under a head of 500 feet; and (6) a small tap line to connect to an existing 60-kV Pacific Gas and Electric Company (PG&E) transmission line. The project's estimated annual generation of 4.6 million kWh will be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

10 a. Type of Application: Major License.

b. Project No.: 8377-001.

c. Date Filed: May 9, 1985.

d. Applicant: Consolidated Hydroelectric Corporation.

e. Name of Project: Isabella Project.

f. Location: On Kern River in Kern County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Kenneth Peters, Mutual Energy Company, Inc., 3451 Longview Drive, Suite 130, North Highlands, CA 95660.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would utilize the existing outlet works of the U.S. Army Corps of Engineers' existing Isabella Dam and Reservoir and consist of: (1) Lining the existing 162-inch-diameter, 448-foot-long outlet tunnel; (2) three 5.67-foot-high, 10-foot-wide slide gates; (3) a 108-inch-diameter, 130-foot-long penstock; (4) a powerhouse containing one 1,300-kW and three 3,550-kW generating units, operating under head of 132 feet; and (5) a 900-foot-long, 66-kV transmission line connecting with Southern California Edison Company (SCE) transmission line. No recreational facilities are proposed. The project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9450-000.

c. Date Filed: September 11, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Stevens Brook.

f. Location: Stevens Brook, Bridgton, Cumberland County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John R. Anderson and Joseph D. Brostmeyer, Burlington Energy Development

Associates, 64 Blanchard Road, Burlington, MA 01803 (617) 229–6103.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 17.5-foot-high, 260-foot-long concrete gravity dam with a 12-foot-high, 40-foot-wide spillway and a 9-foot-wide, 12.5-foot-long concrete intake structure; (2) an existing 0.5 acre impoundment with 2 acre-feet of storage capacity, at a normal maximum surface elevation of 318 feet USGS datum; (3) a proposed 700-foot-long steel penstock providing flow to an existing masonry powerhouse, 20-feet-long and 38-feet-wide, containing one proposed 200 kW capacity turbine/generator, and discharging into a proposed 325-foot-long gravel trailrace before returning to Stevens Brook; (4) a proposed 50-foot-long, 480-volt transmission line; and (5) appurtenant facilities.

The estimated annual energy production is 400,000 kWh at a net hydraulic head of 50 feet. Project power would be sold to Central Maine Power Company. The dam is owned by the State of Maine Environmental Protection Agency.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $11,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 8571–000.

c. Date Filed: August 31, 1984.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: C. M. Harden Dam.

f. Location: On the Big Raccoon Creek in Parke County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Rajeev K. Chaudhary P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would utilize the existing C. M. Harden Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: (1) A proposed penstock 426 feet long and 8.5 feet in diameter; (2) a proposed powerhouse 50 feet long, and 60 feet wide containing two new turbine/generators with a total rated capacity of 1,400 Kw; (3) a proposed tailrace 70 feet long; (4) new transmission lines and; (5) appurtenant facilities. The estimated average annual energy produced by the project would be 5.0 million kWh operating under a net hydraulic head of 64 feet. Project power would be sold to the Public Service Company of Indiana and Indiana & Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be preformed under the preliminary permit would be $65,000.

13 a. Type of Application: Perliminary Permit.

b. Project No.: 9471–000.

c. Date Filed: September 20, 1985.

d. Applicant: Musty Buck Hydro Company.

e. Name of Project: Musty Buck Hydroelectric Project.

f. Location: On Big Chico Creek within lands administered by the Bureau of Land Management in Butte County, California (In sections 8, 17, 19, 30, 29, & 30 of T24N, R3E, M.D.M.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Daniel Lee Ostrander, 12750 Quail Run Drive, Chico, California 95928.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 50-foot-long concrete diversion dam at elevation 2,060 feet; (2) and 8-foot-diameter, 17,000-foot-long steel-lined conduit; (3) a 4-foot-diameter, 2,000-foot-long steel penstock; (4) a powerhouse containing generating units with a combined rated capacity of 7,000 kW to operate under a head of 660 feet; and (5) a 60-kV, 7,500-foot-long transmission line connecting the project with an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: The estimated annual generation of 21 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 9446–000.

c. Date Filed: September 10, 1985.

d. Applicant: Camp Williams Associates.

e. Name of Project: Utah and Salt Lake Canal Project.

f. Location: On Jordan River in Salt Lake County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Mike Graham, 484 East 300 North, Manti, Utah 84642.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would be located entirely on privately owned lands and would consist of: (1) An intake structure on the Utah and Salt Lake Canal at a point about 4 miles downstream from its source on the Jordan river; (2) a penstock, 48 inches in diameter and 1,700 feet long; (3) a powerhouse with an installed capacity of 650 kW operating under a head of 91 feet; (4) a tailrace returning flow to the Jordan River; (5) a transmission line, about 13,000 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,500,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 9388–000.

c. Date Filed: August 5 , 1985.

d. Applicant: Auburn Ravine Hydro Partners.

e. Name of Project: Auburn Ravine Hydroelectric Project.

f. Location: On the Auburn Ravine in Placer County, California (Sections 11&14, T12N, R7E, M.D.B. & M.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contract Person: Mr. David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, CA 95660.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) The applicant's existing 4-foot-high, 25-foot-long concrete dam at elevation 491 feet;

(2) a 42 to 48-inch-diameter, 1,800-foot-long, low-pressure conduit; (3) a 30 to 42-inch-diameter, 1,800-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 800 kW to operate under a head of 105 feet; and (5) a 12-kV, 1,800-foot-long transmission line connecting the project with an existing Pacific Gas & Electric Company (PG & E) line due south of the powerhouse.

k. Purpose of Project: The estimated annual generation of 3.6 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5,A7,A9,B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9517–000.

c. Date Filed: October 2, 1985.

d. Applicant: The White Chuck Water Company.

e. Name of Project: Clear Creek.

f. Location: On Clear Creek in the Mount Baker-Snoqualmie National Forest near Darrington, Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William S. Fowler, Mitex, Inc., 91 Newbury St., Boston, MA 02116.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion dam at elevation 1,000 feet; (2) a 7,000-foot-long, 5-foot-diameter penstock; (3) a powerhouse containing two generating units with ratings of 6,000 kW and 1,500 kW, respectively; and (4) a 5-mile-long transmission line. Applicant estimates the average annual energy production to be 30,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 30 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $75,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to an investor owned or public utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 8569–000.

c. Date Filed: August 31, 1984.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Huntington Dam.

f. Location: On the Wabash River in Huntington County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rajeev K. Chaudhary P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: January 24, 1986.

j. Description of Project: The proposed project would utilize the existing Huntington Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: (1) A proposed penstock 370 feet long and 11.0 feet in diameter; (2) a proposed powerhouse 56 feet long and 48 feet wide containing two new turbine/generators with a total rated capacity of 2,400 kW; (3) a proposed tailrace 170 feet long; (4) proposed transmission lines and; (5) appurtenant facilities. The estimated average annual energy produced by the project would be 7.0 million kWh. Project power would be sold to the Public Service Company of Indiana and Indiana & Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed perliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 8570–000.

c. Date Filed: August 31, 1984.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Patoka Dam.

f. Location: On the Patoka River in Dubois County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rajeev K. Chaudhary P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: January 24, 1986.

j. Description of Project: The proposed project would utilize the existing Patoka Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: (1) A proposed penstock 357 feet long and 8.0 feet in diameter; (2) a proposed powerhouse 48 feet long and 40 feet wide containing two new turbine/generators with a total rated capacity of 1,700 kW; (3) a proposed tailrace 60 feet long; (4) proposed transmission lines and; (5) appurtenant facilities. The estimated average annual energy produced by the project would be 4.4 million kWh. Project power would be sold to the Public Service Company of Indiana and Indiana & Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed

project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*.—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*.—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency

does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 24, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30920 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $216,196.10 obtained as a result of a consent order which the DOE entered into with Marine Petroleum Company, Mars Oil Company, their parents, subsidiaries and affiliates (Marine), a reseller-retailer of refined petroleum products located in St. Louis, Missouri. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0122.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $216,196.10 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Marine Petroleum Company, Mars Oil Company, their parents, subsidiaries, and affiliates (Marine). The funds were provided to the DOE by Marine to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 50 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Marine or to submit a statement verifying that it purchased motor gasoline from Marine and is willing to rely on the data in the audit files. Reseller and retailer applicants will also be required to submit proof of injury as discussed in the Decision, although a detailed demonstration of injury will not be required of those applicants that file at or below the $5,000 threshold level. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit, including customers of Marine's company-affiliated wholesale and retail firms. Unidentified customers who purchased directly from Marine will be required to provide schedules of their monthly purchase volumes. These applicants will be subject to the same requirements regarding proof of injury as are identified purchasers, except in the case of customers which purchased from Marine's retail stations. These customers were ultimate consumers, and as such, do not have to provide a detailed demonstration of injury. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All coments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 23, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 23, 1985.

Name of Firm: Marine Petroleum Company and Mars Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0122.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Marine Petroleum Company, Mars Oil Company, their parents, subsidiaries and affiliates (Marine).

I. Background

Marine is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in St. Louis, Missouri. A DOE audit of Marine's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Based on the audit, the DOE alleged that between November 1, 1973 and April 30, 1974, Marine committed certain pricing violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Marine and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Marine and the DOE entered into a consent order on September 1, 1981. The consent order resolved a Notice of Probable Violation (NOPV) issued on November 26, 1980, and it represents 10.18 percent of the potential liability amount. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Marine does not admit that it violated the regulations.

Under the terms of the consent order, Marine agreed to deposit $198,50 plus installment interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Marine was required to make its payments in 24 equal monthly installments. The consent order was paid in full on June 18, 1982. Including installment interest, Marine's actual deposits total $216,196.10. That sum will be considered to be the principal amount in this proceeding. This decision concerns the distribution of the funds in the Marine escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by Marine's alleged pricing practices between November 1, 1973 and April 30, 1974 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of Marine and we intend to rely in part on that information. In other Subpart V cases where audit material was available identifying purchasers, for example, the refund process has been facilitated by the use of that material. At the same time, these audit files do not necessarily provide conclusive evidence on which to base the distribution of refunds. We have consistently maintained, however, that the information contained in ERA's audit files may reasonably be used to determine the identities of allegedly overcharged purchasers and the amounts of the overcharges. *See, e.g., Marion Corp.* 12 DOE ¶ 85,014 (1984) (the information contained in the audit file may be used to fashion a more accurate refund plan than that devised by using a general volumetric approach). *See also Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983).

During the DOE audit, 50 identified first purchasers were alleged to have been overcharged in purchases of motor gasoline from Marine. The results of this audit also indicated that overcharges had also occurred in sales to customers of Marine's company-affiliated wholesale and retail firms. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions.

We intend to use both the information in the audit files along with these presumptions to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we are making a proposed finding that end-users experienced injury. The volumetric presumption and the end-user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury, a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information

[1] As of November 30, 1985, the Marine escrow account contained a total of $305,620.31, representing $216,196.10 in principal (including installment interest) and $89,424.21 in accrued interest.

sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that most of the 50 identified customers made small purchases.

However, a reseller or retailer which seeks a refund of more than $5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[2]

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we proposed to distribute a portion of the escrow funds to the firms listed in the Apendix, provided they can successfully document their injury with regard to their purchases from Marine. The refund amounts attributable to each firm have been adjusted from those listed in the consent order to reflect the larger principal amount in escrow resulting from Marine's payments of installment interest.[3] Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

As previously noted, this Decision concerns the distribution of the entire $216,196.10 that Marine deposited into the escrow account through June 18, 1982, plus accrued interest since that date. Since the refunds tentatively allotted to identified purchasers total only $101,720.24, the remaining portion of the Marine consent order funds may be distributed among first purchasers other than those identified by the ERA audit, and to customers of Marine's company-affiliated retail and wholesale firms, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of motor gasoline made by Marine during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Using a volumetric approach means that a portion of the Marine consent order amount would be allocated to each gallon of product which a successful claimant purchased from the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.002529 per gallon.[4] Potential applicants that were not identified by the ERA audit of Marine may use this volumetric figure to estimate the refund to which they may be entitled.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein. Similarly, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of injury. *See Office of Enforcement* 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of motor gasoline sold by Marine, documentation of purchase volumes will provide a sufficient showing of injury.

Finally, if a reseller or a retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Marine not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from Marine during the consent order period.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Marine's sales of motor gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant indentified by ERA will be

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[3] These amounts were recalculated according to the following formula: we divided the $198,500 original principal amount into the new principal amount, $216,196.10 to obtain a factor of 1.089149. We then multiplied this factor by the amounts attributed to each firm to obtain the revised refund amounts.

[4] This per gallon factor is computed by dividing the $114,475.86 available for distribution to customers of Marine's company-affiliated retail and wholesale firms, by 45,273,041 gallons, which represents an estimate of the total sales volumes of those firms during the consent order period.

requried to submit either a schedule of its monthly purchases of motor gasoline from Marine or a statement verifying that it purchased motor gasoline from Marine and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of motor gasoline from Marine. If they claim injury at a level greater than the volumetric level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Marine Oil Company pursuant to the consent order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

Appendix I

Name/Address	Escrow amount
Star Service, 156 Progress Parkway, Maryland Heights, MO 63043	$553.78
Checker Oil Co., P.O. Box 162, Hazel Crest, IL 60429	2,420.98
Martin Oil, 144 Weldon Parkway, Maryland Heights, MO 63043	4,600.83
Sirroco Oil, 7755 Carondelet, Clayton, MO 63105	1,713.49
Leonard, 7755 Carondelet, Clayton, MO 63105	780.68
J.D. Street, 144 Weldon Parkway, Maryland Heights, MO 63043	4,495.66
Triangle Refineries, Inc., P.O. Box 3367, Houston, TX 77001	5,135.69
Lincoln Treas. City, GPO Box 1, New York, NY 10116	811.20
Sid Blankenship, Hillsboro, IL 62049	120.38
Robert Brace Service, Wellsville, MO 63384	185.80
Charles Browder Marine, P.O. Box 623, Fultin, KY 42041	682.23
City Ice & Fuel Co., Wickliffe, KY 42087	190.34
Central Petroleum, Centralia, IL 62801	325.42
C.J. Coddington, 1727 West 50th, O'Fallon IL 62269	208.92
Raymond Cornwell, Cornwell Oil Company, 401 E. Main Street, E. Prairie, MO 63845	211.36
C.S.C. Oil Co, P.O. Box 1713, Louisville, KY 40201	416.22
C.C. Dillon Oil Co., 1342 Lonedell Rd., Arnold, MO 63010	1,752.21
Herbert Duck, Marine Service Station, Dyer, TN 38330	331.23
Feld Chevrolet, 7700 Manchester Road, St. Louis, MO 63143	*12.10
Gold Oil Co., 701 Sherman Road, Bellsville, IL 62221	308.39
Henry County Board of Education, Paris, TN 38242	152.20
James Jennings Summit Service, Rt. 1, Desota, MO 63020	83.89
Keys & Son Oil Co., Villa Ridge, MO 63089	261.27
Billy J. Lawson, Frankclay, MO 63644	99.20
Laws Enterprises (Bi-Rate), 2110 Chouteau, St. Louis, MO 63103	75.49
Manchester Leasing 1075 S. Brentwood Blvd., St. Louis, MO 63117	*10.34
Marvel Oil, 6258 Etzel Avenue, St. Louis, MO 63133	*2.98
McCollum Service Station, Vandalia, MO 63382	60.97
Midwest Petroleum, 6760 Southwest Avenue, St. Louis, MO 63143	1,156.00
Lewis Mirviss, 4517 Minnetonka Blvd., Minneapolis, MN 55416	539.55
Mofitt Oil Co., R.R. 3, Waterloo, IL 62298	91.44
Mullinicks & Boone, Marine Service Station, McEwen, TN 37101	167.34
Clyde Nixon, Highway 21 East, Potosi, MO 63364	224.33
Niemeyer Brothers, Hwy 54 West, Bowling Green, MO 63334	84.72
Fred Nixon Service Station, R.R. 1, Mineral Point, MO 63660	283.41
Obion County Highway Department, E. Jackson Street, Union City, TN 38261	116.97
Obion County Board of Education, Troy, TN 38260	*8.63
Onyx Oil, 11345 Olive St. Rd., Creve Coeur, MO 63141	424.32
James Petty, Route 5, Trenton, TN 38382	107.36
Reynolds Service Station, 1403 Church Street, Tiptonville, TN 38079	87.49
Saveway Oil Company, P.O. Box 338, Cape Girardeau, MO 63701	4,591.55
Super Gas, P.O. Box 248, Arnold, MO 63010	11,462.81
Tenneco Oil Co., P.O. Box 101229, Atlanta, GA 30302	507.00
Len Theole, 1020 Hawthorn, St. Charles, MO 63301	399.35
Weldon Turner, 1300 N. Main, Desota, MO 63020	115.47
Walker Oil Co., P.O. Box 130, Dyersburg, TN 38024	48.99
Wides Oil Co., Murphysboro, IL 62966	3,730.79
Flash Oil, 7755 Carondelet, Clayton, MO 63105	32,272.98
Star Service, 156 Progress Parkway, Maryland Heights, MO 63043	87.55
Site Oil, 7755 Carondelet, Clayton, MO 63105	19,208.66

* As noted in the text of the Decision, we do not intend to process refunds below $15.

[FR Doc. 85-30926 Filed 12-30-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AAA-FRL-2945-7]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of December 2, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475-8025.

Dated: December 17, 1985.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM-216).

EPA Master List of Debarred, Suspended and Voluntarily Excluded Persons

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.C. Lawrence Leather Co., Inc. (Danvers, MA)	83-0007-00	D	4-12-84	4-11-87	§ 32.200(a)(c)(i)
A.F. Beil Electric Co., Inc. (Youngstown, OH)	85-0014-00	D	6-27-85	6-26-88	§ 32.200(a)
Altman, Larry L. (Charleston, SC)	85-0063-03	S	7-29-85	OPEN	§ 32.300(b)
Anderson, Scott (Walnut Creek, CA)	83-0004-01	D	6-17-83	6-16-86	§ 32.200(a)(b)(e)(f)
Atlas Prestressing Corp. (Panorama City, CA)	83-0050-00	D	8-02-83	8-01-86	§ 32.200(a)
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	D	12-02-83	10-29-88	§ 32.200(b)
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	4-12-84	4-11-87	§ 32.200(a)(c)(i)
Barnum, James Charles (Utica, MI)	86-0010-01	S	12-10-85	OPEN	§ 32.200(a)
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3)
Blackwelder, Ray Martin (Concord, NC)	84-0011-01	D	6-27-85	6-26-88	§ 32.200(a)
Bowe, Walsh & Associates Inc. (Melville, NY)	83-0040-00	D	4-14-83	4-13-86	§ 32-200(a)(e)
Boyette, Willie Eugene (Wilson, NC)	83-0044-01	D	4-15-85	4-14-87	§ 32.200(a)
Byrant-Durham Electric Co., Inc. (Durham, NC)	85-0028-00	D	8-30-85	8-29-88	§ 32.200(a)(3)
Croft, William A. (Madison, WI)	83-0047-00	D	8-20-84	8-19-87	§ 32.200(a)
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	7-29-85	OPEN	§ 32.300(b)
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	4-30-85	4-29-88	§ 32.200(a)
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	3-12-85	3-11-88	§ 32.200(a)
Dobson, Arthur A. (Lincoln, NE)	83-0030-01	D	8-30-85	4-18-87	§ 32.200(i)
Domanski, Gary Henry (Utica, MI)	86-0010-02	S	12-10-85	OPEN	§ 32.200(a)
Enmanco (Utica, MI)	86-0010-00	S	12-10-85	OPEN	§ 32.200(a)
Environmental Management Corp. (Utica, MI)	86-0010-00	S	12-10-85	OPEN	§ 32.200(a)
Errichetti, Angelo J. (Camden, NJ)	83-0040-04	D	4-14-83	4-13-86	§ 32.200(a)(b)
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	8-26-85	8-25-88	§ 32.200(a)
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	9-04-85	9-03-88	§ 32.200(a)(3)
FSA Engineering Consultants (Winfield, KS)	84-0028-00	D	8-26-85	8-25-88	§ 32.200(a)
Gabey, Martin (Northport, NY)	83-0040-02	D	12-16-83	12-15-86	§ 32.200(a)
Galiber, Joseph L. (Bronx, NY)	85-0022-01	S	7-30-85	OPEN	§ 32.300(b)
G.E. Moore Co., Inc., (Greenwood, SC)	85-0031-00	D	12-19-85	12-18-88	§ 32.200(a)(3)
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	4-12-84	4-11-87	§ 32.200(c)(i)
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	9-26-85	9-25-88	§ 32.200(a)(3)
Harry Johnson Plumbing Co., Inc. (Walla Walla, WA)	83-0060-00	D	7-22-83	7-21-86	§ 32.200(b)(c)((e)(i)
Herring, Donald W. (Wilson, NC)	83-0044-01	D	10-11-84	10-10-87	§ 32.200(a)
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3)
Hunter, James C. (Gardena, CA)	83-0002-02	D	7-07-83	7-06-86	§ 32.200(a)
Insulation Speciality & Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200(c)(i)
Jackson, Manly (San Jose, CA)	83-0048-02	D	6-27-83	6-26-86	§ 32.200(a)
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	7-22-83	7-21-86	§ 32.200(b)(c)
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	4-12-84	4-11-87	§ 32.200(c)(i)
Jopel Contracting & Trucking Corp. (Bronx, NY)	85-0022-00	S	7-30-85	OPEN	§ 32.300(b)
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	9-26-85	9-25-88	§ 32.200(a)(3)
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	9-26-85	9-25-88	§ 32.200(a)(3)
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	10-04-84	10-03-87	§ 32.200(c)(i)
L.A. Reynolds Co., (Winston Salem, NC)	83-0036-00	D	7-01-83	6-30-86	§ 32.200(a)
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	7-29-85	OPEN	§ 32.200(b)
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	7-29-85	OPEN	§ 32.200(b)
Lee, Herbert P., III. (Sumter, SC)	84-0013-01	VE	2-14-853	12-31-87	§ 32.200(a)
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	7-07-83	7-06-86	§ 32.200(a)
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	4-12-84	4-11-87	§ 32.200(c)(i)
Masselli, William P. (Bronx, NY)	85-0022-02	S	7-30-85	OPEN	§32.300(b)
Mattlin, Thomas B. (Delta, PA)	84-0007-01	VE	10-24-85	4.23-86	§ 32,200
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	1-11-85	1-10-88	§32.300(a)
Moorse, Lawrence (Marshall, MN)	85-0053-.1	D	12-17-85	12-16-88	§32.300(a)(3)
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0601-1½ 82-04081	D	10-07-82	2-16-87	§32.300(b)(c)(e)(i)
Murray Paving Co., Inc. (Whitesboro, NY)	84-0032-00	D	8-19-85	10-18-86	§32.300(a)
Murray, Harry (Whitesboro, NY)	84-0032-01	D	8-19-85	10-18-86	§32.300(a)
Newman, Fred M. (Vienna, VA)	83-0072-01	D	9-30-83	9-29-86	§32.300(i)
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	11-29-83	11-28-86	§32.300(a)
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§32.300(e)(i)
Post-Tensioning Service Corp. (Saratoga, CA)	83-0001-00	D	7-08-83	7-07-86	§32.300(a)
Regenscheid, Charles E. (St. Peter, MN)	85-0019-03	VE	12-19-85	12-18-87	§32.300(a)(3)
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	7-01-83	6-30-86	§32.300(a)
Richmond, Elwood). (Grand Forks, ND)	83-0006-01	D	6-06-83	6-05-86	§32.300(a)(f)
Richmond Engineering, Inc. (Grand Forks, ND)	83-0006-00	D	6-06-83	6-05-86	§32.300(a)(f)
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83-0006-02	D	6-06-83	6-05-86	§32.300(a)(f)
Rio Grande Construction Co. (Bunkie, LA)	85-0063-00	S	7-29-85	OPEN	§32.300(b)
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	5-17-84	5-16-87	§ 32.200(a)
Rothrock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	5-18-84	5-17-87	§ 32.200(a)
Sargent Electric Co., Inc. (Pittsburgh, PA)	85-0020-00	S	7-26-85	OPEN	§ 32.200(a)(3)
Sargent, Frederic B. (Pittsburgh, PA)	85-0020-01	S	7-26-85	OPEN	§ 32.200(a)(3)
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3)
Sauseda, Roy (Bunkie, LA)	85-0063-02	S	7-29-85	OPEN	§ 32.200(b)
Shackleford, Robert S. (Durham, NC)	85-0028-01	D	8-30-85	8-29-88	§ 32.200(a)(3)
Slattery, Edward J. (Youngstown, OH)	85-0015-01	D	9-15-85	3-14-87	§ 32.200(a)(3)
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i)
Stone, Francis (Swanzey, NH)	83-0007-04	D	4-12-84	4-11-87	§ 32.200(a)(c)(i)
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	8-26-85	8-26-88	§ 32.200(a)
Toy, Daniel Lee (Utica, MI)	86-0010-03	S	12-10-85	OPEN	§ 32.200(a)
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	7-29-85	OPEN	§ 32.300(b)
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	7-29-85	OPEN	§ 32.300(b)
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	7-29-85	OPEN	§ 32.300(b)
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	7-29-85	OPEN	§ 32.300(b)
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200(a)
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200(a)
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200(a)
Twedell, David Bruce (Gainesville, FL)	83-0020-01	D	8-30-85	8-29-87	§ 32.200(a)
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	7-08-83	7-07-86	§ 32.200(a)
Vryenhoek, Ralph D. (Pittsburgh, PA)	85-0020-02	S	7-26-85	OPEN	§ 32.200(a)(3)
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	4-14-83	4-13-86	§ 32.200(a)
Walstad, Merrill (Huntington Beach, CA)	83-0003-03	D	6-27-83	6-26-86	§ 32.200(a)
Watson Electrical Construction Co. (Wilson, NC)	83-0044-00	D	4-15-85	4-14-87	§ 32.200(a)
Wilson, John Bruff (Lebanon, TN)	84-0014-01	VE	10-16-85	10-15-86	§ 32.200(a)

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Wirt, David (Douglasville, GA)	82-0601 82-0408	D	10-07-82	2-16-87	§ 32.200(b)(c)(e)(i)
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	12-07-82	2-16-87	§ 32.200(c)(e)
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	2-16-87	§ 32.200(c)(e)(i)
Zeigler, Beaty Stevens (Sumter, SC)	83-0045-01	VE	7-15-83	8-31-86	§ 32.200(a)

[1] D=Debarred; S=Suspended; VE=Voluntarily Excluded

[FR Doc. 85-30805 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51600; FRL-2935-6]

Certain Chemical Premanufacture Notices

Correction

In FR Doc. 85-29123 beginning on page 50225 in the issue of Monday, December 9, 1985, make the following corrections:

1. On page 50226, in the third column, under **P 86-218**, in the second line under *Exposure*, "of workers" should read "of 6 workers".

2. On page 50227, in the first column, under **p 86-221**, in the third line under *Exposure*, "hrs/da" should read "2 hrs/da".

BILLING CODE 1505-01-M

[OPTS-59742; FRL-2932-9]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-29040, beginning on page 50006 in the issue of Friday, December 6, 1985, make the following corrections:

On page 50006, under **Y86-36**, in *"Toxicity Data"*, in the first line, "110,000" should read "10,000".

On page 50007, in the first column, under **Y86-38**, in *"Use/Production"*, in the second line, "automobile" should read "automotive".

BILLING CODE 1505-01-M

[OPTS-51566A; FRL 2946-8]

Substituted Pyridine Disazo Dye; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) P 85-735, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on March 22, 1986.

FOR FURTHER INFORMATION CONTACT: Charlotte White, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington DC 20460, (202-382-3373).

SUPPLEMENTARY INFORMATION: On April 2, 1985, EPA received PMN P 85-735 for a new chemical substance, substituted pyridine disazo dye. The submitter claimed the chemical identity, production volume, and portions of a mixture to be confidential business information. Notice of receipt was published in the **Federal Register** of April 12, 1985 (50 FR 14439). The original 90-day review period, including a voluntary suspension by the submitter, was scheduled to expire on December 22, 1985.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to March 22, 1986.

PMNs are available for public inspection in Rm. E-107, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: December 8, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-30887 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Ameritrust Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulaton Y (12 CFR 225.23(a)(2)) 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 § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AT Indiana Corporation;* Cleveland, Ohio (a Subsidiary of Ameritrust Corporation, Cleveland, Ohio); to

become a bank holding company by acquiring 100 percent of the voting shares of First Indiana Bancorp, Elkhart, Indiana thereby indirectly acquiring First National Bank, Elkhart, Indiana.

Ameritrust Corporation, Cleveland, Ohio; to acquire First Indiana Bancorp, Elkhart, Indiana, thereby indirectly acquiring First National Bank, Elkhart, Indiana.

Ameritrust Corporation, Cleveland, Ohio; to acquire through AT Indiana Corporation, Cleveland, Ohio (Ameritrust Corporation's wholly-owned subsidiary), First Indiana Life Insurance Company ("Company"), Elkhart, Indiana, and thereby engage in the activity of underwriting credit life and accident and health insurance that is directly related to extensions of credit by any bank subsidiary of Company's parent, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the nonbank office to be acquired in Elkhart, Indiana, and throughout the United States.

Board of Governors of the Federal Reserve System, December 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30853 Filed 12-30-85; 8:45 am]

BILLING CODE 6210-01-M

Area Bancshares Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities; AT Indiana Corp. et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (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 § 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 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 January 22, 1986.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Area Bancshares Corporation,* ("Applicant") Hopkinsville, Kentucky, to acquire indirectly 50 percent of North American Financial Services of Kentucky ("Company"), Louisville, Kentucky, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of Regulation Y. Applicant and North American Financial Services Ltd., St. Petersburg, Florida, a nonbanking company, each own 50 percent of Datanet, Inc., ("Datanet"), Hopkinsville, Kentucky. Datanet and Mid-American Data Processing, Inc., a wholly owned subsidiary of Mid-America Bancorp, Louisville, Kentucky, a bank holding company, will each own 50 percent of Company. Immediately after Applicant acquires 50 percent of Company, Company will acquire all of the voting shares of L.H.F Information Processing, Inc. of Louisville ("L.H.F."), Louisvillle, Kentucky. L.H.F. is a wholly-owned subsidiary of North American Financial Services, Ltd. These data processing activities would be conducted by Company and L.H.F. Information Processing, Inc., in Kentucky, its contiguous states and South Carolina. The nonbank offices to be acquired are located in Louisville, Kentucky.

2. *Mid-American Bancorp,* Louisville, Kentucky; to engage, *de novo,* through its wholly-owned subsidiary, Mid-America Data Processing, Inc. ("MDP"), Louisville, Kentucky, in data processing activities pursuant to § 225.25(b)(7) of Regulation Y. MDP and Datanet, Inc. ("Datanet") will each acquire 50 percent of North American Financial Services of Kentucky ("Company"), Louisville, Kentucky. Area Bancshares Corporation, Hopkinsville, Kentucky, and North American Financial Services, Ltd., St. Petersburg, Florida, each own 50 percent of Datanet. Immediately after MDP and Datanet acquire Company, Company will acquire all of the voting shares of L.H.F. Information Processing, Inc., of Louisville, Kentucky, a wholly-owned subsidiary of North American Financial Services, Ltd. These activities would be conducted by Company and L.H.F. Information Processing, Inc., in Kentucky, its contiguous states and South Carolina. The nonbank offices to be acquired are located in Louisville, Kentucky.

Board of Governors of the Federal Reserve System, December 24, 1985.

James MacAfee,

Associate Secretary of the Board.

[FR Doc. 85-30852 Filed 12-30-85; 8:45 am]

BILLING CODE 6210-01-M

Cornerstone Financial 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 persentation would not suffice in lieu of a hearing, identifying specificially 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 aggrieve by approval or the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cornerstone Financial Corporation,* Derry, New Hampshire; to engage *de novo* directly with its wholly-owned subsidiary, Derry Bank and Trust Company, Derry, New Hampshire in participations on an ongoing basis in commercial lending, pursuant to § 225.25(b)(1) of Regulation Y.

2. *The Conifer Group, Inc.,* Worcester, Massadchusetts; to engage *de novo* through its subsidiary, Conifer Life Insurance Company Inc., Phoenix, Arizona, in underwriting, through reinsurance, of credit life and credit accident and health insurance that is directly related to extensions of credit by the banking subsidiaries of The Conifer Group Inc., pursuant to § 225.25(b)(9) of Regulation Y., These activities would be conducted in the Commonwealth of Massachusetts.

B. **Federal Reserve Bank of New York** (Willian L. Ruglege, Vice President) 33 Liberty Street, New York, New York 10045:

1. *European American Bancorp,* New York, New York; to engage *de novo* through its subsidiary, EAB Brokerage Services, Inc., Uniondale, New York, in providing securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services. All such brokerage services will be restricted to buying and selling securities solely as agency for the account of customers and will not include securities underwriting or dealing or offering investment advice or providing research services, pursuant to § 225.25(b)(15) of Regulation Y.

2. *United Jersey Banks,* Princeton, New Jersey; to engage *de novo* through its subsidiary, United jersey Credit Life Insurance Company, Phoenix, Arizona in underwriting credit life and accident and health insurance with respect to open end credit card and "Line of Credit" extensions of credit, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted on a nationwide basis.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mark Twain Bancshares, Inc.,* St. Louis, Missouri; to engage *de novo* through its subsidiary, Mark Twain Brokerage Services, Inc., St. Louis, Missouri, in securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts and cash management services, pursuant to § 225.25(b)(15) of Regulation Y. Applicant will not provide investment advice. Comments on this application must be received not later than January 15, 1986.

2. *Liberty United Bancorp, Inc.,* Louisville, Kentucky; to engage *de novo* through its subsidiary, Banker's Investment Group, Inc., Louisville, Kentucky, in securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Mercantile Bancorp,* Los Angeles, California; to engage *de novo* directly to supplement and/or participate in loans made by its bank subsidiary, Mercantile National Bank, Los Angeles, California, until that portion of those loans could be placed with another financial institution, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30854 Filed 12-30-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Permerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-0294—Masco Corporation's proposed acquisition of voting securities of Flint & Walling Industries, Inc., (Edward L. Benson, UPE).	Dec. 5, 1985.
(2) 86-0295—Masco Industries, Inc.'s proposed acquisition of assets of Flint & Walling Industries, Inc., (Edward L. Benson, UPE).	Do.
(3) 86-0337—Alberta Energy Company Ltd.'s proposed acquisition of assets of Royal Dutch Petroleum Company.	Dec. 6, 1985.
(4) 86-0247—Universal Foods Corp.'s proposed acquisition of voting securities of Universal Group Limited.	Dec. 9, 1985.
(5) 86-0258—ConAgra, Inc.'s proposed acquisition of assets of Jdbl and Davis Abramson, (Camerican International, Inc., UPE).	Do.
(6) 86-0284—The Boston Five Cents Savings Bank, FSB's proposed acquisition of voting securities of Commerce McGehee Mortgage, Inc., (National Commerce Bancorporation, UPE).	Do.
(7) 86-0292—William H. Goodwin, Jr.'s proposed acquisition of voting securities of Min Union Machinery, Inc., (Minstar, Inc., UPE).	Do.
(8) 86-0297—Pilkington Brothers plc's proposed acquisition of voting securities of Syntex Ophthalmics, (Syntex Corporation, UPE).	Do.
(9) 86-0319—The "1964 Simmons Trust's" proposed acquisition of voting securities of Sea-Land Corporation.	Do.
(10) 86-0321—Pleasant Travel Service's, (Edward J. Hogan and Marilyn J. Hogan, UPE's proposed acquisition of voting securities of ITT Corporation.	Do.
(11) 86-0331—Material Sciences Corporation's proposed acquisition of voting securities of Deposition Technology Inc., (Richard L. Burns, UPE).	Do.
(12) 86-0334—Triumph International Spiesshofer & Braun's proposed acquisition of voting securities of NCC Industries, Inc..	Do.
(13) 86-0360—Elsevier-NDU N.V.'s proposed acquisition of voting securities of CDA Investment Technologies, Inc., (Robert A. Leavy, UPE).	Do.
(14) 86-0330—Beecham Group p.l.c.'s proposed acquisition of voting securities of Reheis Chemical Company, (Pantry Pride, Inc., UPE).	Dec. 10, 1985.
(15) 86-0345—Leslie A. Hynes' proposed acquisition of assets of South Buffalo Railway Company and certain real property including a ship canal, (Bethlehem Steel Corporation, UPE).	Do.
(16) 86-0356—The Moonie Oil Company Limited's proposed acquisition of voting securities of Avalon Corporation.	Do.
(17) 86-0312—Enserch Corporation's proposed acquisition of voting securities of Oceaneering International, Inc..	Dec. 11, 1985.
(18) 86-0320—Arabian Investment Banking Corporation's proposed acquisition of voting securities of Dellwood Foods, Inc., (Finevest Partners, UPE).	Do.
(19) 86-0342—PacifiCorp's proposed acquisition of voting securities of Hyster Credit Corporation, (ESCO Corporation, UPE).	Do.
(20) 86-0279—Continental Telecom Inc.'s proposed acquisition of voting securities of IPC Communications, Inc..	Dec. 12, 1985.

Transaction	Waiting period terminated effective
(21) 86-0293—Century Communications Corp.'s proposed acquisition of assets of Westinghouse Electric Corporation.	Do.
(22) 86-0309—CSI Management, Inc.'s proposed acquisition of assets of Rogers Cablesystems, Inc., (Edward S. Rogers, UPE).	Do.
(23) 86-0324—Knight-Ridder Newspapers, Inc.'s proposed acquisition of assets of The Evening News Association, (Gannett Co., Inc., UPE).	Do.
(24) 86-0333—Southmark Corporation's proposed acquisition of voting securities of Servico, Inc..	Do.
(25) 86-0361—Fox Meyer Corporation's proposed acquisition of voting securities of Ben Franklin Stores Division, (HMI Holding, Inc., UPE).	Do.
(26) 86-0365—Broken Hill Proprietary Company Limited's proposed acquisition of voting securities of Monsanto Oil Company, (Monsanto Company, UPE).	Do.
(27) 86-0371—Mr. Charles Robin's proposed acquisition of voting securities of Dunham-Bush, Inc., (Allied-Signal, Inc., UPE).	Do.
(28) 86-0373—Texas Medical Center, Inc.'s proposed acquisition of voting securities of Shamrock Hilton Hotels, (Hilton Hotels) Corporation, UPE).	Do.
(29) 86-04000—Royal Dutch* Petroleum Company's proposed acquisition of assets of Phillips Petroleum Company.	Do.
(30) 86-0276—Freedom Newspaper, Inc.'s proposed acquisition of assets of WRGB, Inc., (UniCom Partners, L.P., UPE).	Dec. 13, 1985.
(31) 86-0339—William L. Hutchison's proposed acquisition of voting securities of United States Steel Corporation.	Do.
(32) 86-0347—Healthwest Foundation's proposed acquisition of assets of Riverside General Hospital Associates, dba Riverside General Hospital.	Do.
(33) 86-0348—Whirlpool Corporation's proposed acquisition of assets of Mastercraft Industries Corp..	Do.
(34) 86-0355—Minerals and Resources Corporation Limited's proposed acquisition of voting securities of Danville Resources, Inc., (Inspiration Resources Corporation, UPE).	Do.
(35) 86-0346—Pennwalt Corporation's proposed acquisition of voting securities of Turco Purex Industrial. Corp. and Turco Products, Inc., (Purex Industries, Inc., UPE).	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-30896 Filed 12-30-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of January 1986.

National Advisory Council on Alcohol Abuse and Alcoholism, January 23-24; 10:30 a.m., Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue, S.W., Washington, DC 20201

Open—January 23: 10:20 a.m.-5:00 p.m.

Closed—Otherwise

Contact: James Vaughan, Parklawn Building, Room 16C20, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding the policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: From 10:30 a.m.-5:00 p.m., January 23, the open session will be devoted to general business of the Council and a discussion of current budget, legislative, and program activities. From 9:00 a.m. to adjournment, January 24, which will be the closed session, the Council will conduct a final review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

National Advisory Council on Drug Abuse, January 28-29; 9:00 a.m., National Institutes of Health Building 31C, Conference Room 9, Bethesda, MD 20205

Open- January 28; 9:00 a.m.-12 noon, January 29; 9:00 a.m.-5:00 p.m.

Closed—Otherwise

Contact: Sheila Gardner, Parklawn Building, Room 10A-03, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6460

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services; the Administrator, Alcohol, Drug Abuse, and Mental Health Administration; and the Director, National Insititute on Drug Abuse, on the development of new initiatives and priorities and the efficient prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: On January 28, from 9:00 a.m.-12 noon, and on January 29, from 9:00 a.m.-5:00 p.m., the meeting will be open for discussion of administrative announcements, program development, and policy issues. On January 28, from 1:30 a.m.-to 5:00 pm., the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375. NIDA: Ms, Mary Kielkopf, Committee Management Officer, Room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1644.

Dated: December 24, 1985.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-30895 Filed 12-30-85; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[BERC-367-N]

Medicare Program; Definition of Disproportionate Share Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth two definitions: (1) Hospitals that serve a significantly disproportionate share of low income patients; and (2) hospitals that serve a significantly disproportionate share of Medicare Part A beneficiaries. The notice addresses section 2315(h)(1) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which requires that the Secretary develop and publish a definition of these hospitals. It also meets the requirements of an order of the United States District Court for the District of Columbia in *Samaritan Health Center, et al. v.*

Heckler, Civil Action No. 85-0464 dated August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886(d) of the Social Security Act (Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services. The prospective payment system became effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis related groups (DRGs) and the rate paid for a particular discharge is based on the relative weight of the DRG into which the patients' case/inpatient stay is classified.

Section 1886(d)(5)(C)(i) of the Act authorizes adjustments to the prospective payment rates as follows:

> The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection as the Secretary deems appropriate to take into account the special needs of . . . public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this title.

We have not made special provisions for those hospitals (commonly referred to as disproportionate share hospitals) in the Medicare regulations because, based on our past analyses (which are described in **Federal Register** publications 47 FR 43285, 48 FR 39416, 48 FR 39783, 49 FR 276-277, 50 FR 24384-24385 and 50 FR 35685-35686), we believe that there is not currently sufficient evidence to demonstrate that an adjustment is warranted.

In connection with the statutory provision regarding hospitals serving a significantly disproportinate share of low income patients or Medicare Part A beneficiaries, Congress required the Secretary, in section 2315(h)(1) of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98-369), to develop and publish a definition of these hospitals. Section 2315(h)(2) of the DRA requires that we provide a list of the hospitals which meet the definition to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the Senate. However, we had not published a definition or developed a list of hospitals meeting the definition because we believe further analysis is necessary to produce a reasonable definition and to determine whether an adjustment is warranted. We are currently in the process of gathering the data for this analysis.

On August 29, 1985, the United States District Court for the District of Columbia in *Samaritan Health Center, et al. v. Heckler* (Civil Action No. 85-0464) ordered the Secretary to develop and publish a definition of disproportionate share hospitals and to identify those hospitals to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on or before December 31, 1985.

Thus, this notice is issued in response to the Congressional mandate of section 2315(h)(1) of the DRA and the court order. It sets forth two definitions: (1) Hospitals serving a significantly disproportionate share of low income patients; and (2) hospitals serving a significantly disproportionate share of Medicare Part A beneficiaries. The court order compels us to issue these definitions based on the data currently available rather than waiting for the further analysis that we believe is necessary.

As required by Congress and the court order, we are forwarding to the appropriate Congressional committees a list identifying the hospitals that based on currently available data meet these definitions.

II. Definitions

A. General

Because of the time constraints placed on us, we have relied on a statistical definition applied to two variables that are related to a hospital's share of low income patients and Medicare patients. The variables are (1) the ratio of hospital inpatient days for Medicare beneficiaries qualifying for SSI payments (data source: Social Security Administration (SSA), 1984 file) to covered Medicare hospital inpatient days (data source: HCFA, 1984 Medicare PATBILL file) and (2) the ratio of Medicare inpatient days (data source: HCFA, Admissions Pattern Monitoring file, Hospital 1983 Fiscal Year) to total hospital inpatient days (data source: American Hospital Association (AHA), Hospital 1983 Fiscal Year).

The statistical definition applied to these ratios yields the method by which hospitals are designated disproportionate share hospitals. Hospitals with either ratio exceeding the national mean value plus 3 standard deviations are disproportionate share hospitals. The Congressional mandate was to define hospitals with a *significantly* disproportionate number of low income and Medicare patients, not merely hospitals with a large proportion of these patients. We interpret this mandate as Congressional concern over hospitals that have low income and Medicare utilization well outside the average. Therefore, consistent with the Congressional mandate, we believe that a measure based on 3 standard deviations from the mean assures that only hospitals with a significantly disproportionate share of low income or Medicare patients are recognized within our definition.

B. Low Income Patients

A hospital serving a significantly disproportionate share of low income patients is one whose ratio of hospital inpatient days for Medicare beneficiaries qualifying for Supplemental Security Income (SSI) payments to total hospital inpatient days exceeds 39.55 percent.

For this ratio, the mean value is 10.73 percent and the standard deviation is 9.605 percent. (The mean was derived by summing the ratio of hospital inpatient days for Medicare beneficiaries qualifying for SSI payments to covered Medicare hospital inpatient days for each hospital, and dividing by the total number of hospitals in the database.) Thus, hospitals with a ratio exceeding 39.55 percent would be identified as serving a significantly disproportionate share of low income patients. The database for this computation contained 5788 Medicare certified hospitals and yielded 89 hospitals with a disproportionate share of low income patients.

Under the Federal SSI program, payments are made to low-income aged, blind, and disabled individuals. We have used SSA SSI data linked to Medicare beneficiary data to define hospitals serving a disproportionate share of low income patients because it reflects the application of a uniform Federal standard for low income patients across States and is related to the delivery of health services to Medicare patients.

C. Medicare Patients

A hospital serving a significantly disproportionate share of Medicare patients is one whose ratio of Medicare inpatient days to total inpatient days exceeds 91.01 percent.

For this ratio, the mean value is 49.69 percent and the standard deviation is 13.774 percent. (The mean was derived by summing the ratio of Medicare inpatient days to total inpatient days for each hospital, and dividing by the total

number of hospitals in the database.) Thus, hospitals with a ratio exceeding 91.01 percent would be identified as serving a significantly disproportionate share of Medicare Part A patients. The database for this computation contained 5443 Medicare certified hospitals. (This represents a lower number of hospitals than for the ratio for low income patients because of difficulties merging AHA data with HCFA data). From the database, eighteen hospitals met the definition of a hospital with a disproportionate share of Medicare patients.

We used 1983 AHA Annual Survey patient day information because it was the most recent data source for hospital total inpatient days. We therefore linked that information with Medicare inpatient day information from the Admissions Pattern Monitoring system for the 1983 period to define hospitals serving a disproportionate share of Medicare patients. Athough the AHA is the most recently available information on total patient days, it is unaudited survey data and is missing values on the survey responses, which were self-reported by hospitals. In addition, there are difficulties in linking the two different data sources (AHA and HCFA) for each hospital.

D. Conclusion

Although we have used the best data currently available to us, problems still remain with the data in terms of completeness, accuracy, and validity—especially with our use of AHA patient day data in combination with Medicare program data. We recognize that there are limitations to this method of determining disproportionate share hospitals, and we would have preferred to complete our analysis before issuing a definition and a list. This was not possible within the time and the data available to us. Thus, we would caution that a complete analysis might result in the establishment of a different definition and, consequently, a different list.

Although we are establishing definitions, we are not making adjustments to the prospective payment rates for disproportionate share hospitals at this time

(Section 2315(h)(1) of the Deficit Reduction Act of 1984 (Pub. L. 98-369))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: December 19, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: December 24, 1985.

Otis R. Bowen,

Secretary.

[FR Doc. 85-31004 Filed 12-30-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Safford District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43, CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Friday, February 7, 1986, at 10:00 a.m.

ADDRESS: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Public Affairs Specialist, Safford District Office, 425 E. 4th Street, Safford, AZ 85546. Telephone (602) 428-4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: State and Private Land Exchanges; San Simon Resource Management Plan; Aravaipa Canyon Wilderness Management Plan; Management Update; and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the Safford District Manager by February 6, 1986. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: December 19, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-30882 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-32-M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 60558, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, October 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms, and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 85-30878 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-66-M

[M-63882]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-63882—Exchange of public and private lands, Valley, Fergus, Chouteau, Blaine, and Hill Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 11 N., R. 17 E.,
Sec. 13, SW¼NE¼.
T. 19 N., R. 21 E.,
Sec. 6, S½SE¼, SE¼SW¼
T. 20 N., R 20 E.,
Sec. 8, NE¼NE¼, W½NE¼, NW¼.
T. 25 N., R. 10 E.,
Sec. 5, SW¼NW¼.
T. 26 N., R. 15 E.,
Sec. 34, SE¼SE¼.

T. 27 N., R. 4 E.,
Sec. 32 SW¼SE¼.
T. 27 N., R. 19 E.,
Sec. 17, SE¼NW¼, SW¼NE¼.
T. 31 N., R. 16 E.,
Sec. 25, Lot 4.
T. 34 N., R 40 E.,
Sec. 4, Lot 1, SE¼NE¼.
T. 35 N., R. 12 E.,
Sec. 18, SW¼NE¼.
T. 37 N., R. 10 E.,
Sec. 24, NE¼NE¼.
T. 37 N., R. 11 E.,
Sec. 19, Lot 1.
Aggregating 844.36 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 24 N., R 9 E.,
Sec. 9, Lot 5;
Sec. 10, Lot 3.
T. 24 N., R. 13 E.,
Sec. 23, Lots 3, 5;
Sec. 25, Lots 6–8, NW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 26, Lots 2, 3, N½NW¼.
Aggregating 436.48 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. 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 reality action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and removed minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for reviewing at this BLM office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment of $980 to the United States of America.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

The only lands in this exchange which may be subject to the Classification and Multiple Use Act of 1964 are located in T. 25 N., R. 10 E., sec. 5, SW¼NW¼. This parcel will be exchanged only when the tract is determined available for exchange. This exchange is consistant with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as the United States of America will be acquiring a segment of land along the Wild and Scenic Missouri River containing Hole-In-The-Wall, Cathedral Rock as well as an island with wildlife values.

Dated: December 23, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 85–30879 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-DN-M

Wyoming; Realty Action; Exchange of Public Lands and Interests in Sweetwater County for Private Lands and Interests in Teton and Sweetwater Counties

An exchange proposal to acquire valuable wildlife habitat on private land in Teton County is being evaluated. The private land proposed for exchange is located within the National Elk Refuge and is owned by Teton Valley Ranch of Kelly, Wyoming. This parcel will be acquired under section 206(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 and transferred to the U.S. Fish and Wildlife Service to be managed as an integral part of the National Elk Refuge.

This private parcel is located in Township Forty-two (42) North, Range One Hundred and Fifteen (115) West, Sixth Principal Meridian: Those parts of Sections Ten (10), Eleven (11), Fourteen (14), and Fifteen (15) described as follows: Lots One (1) through Seventeen (17), both inclusive, of Teton Valley Ranch Subdivision, Unit I, according to that plat recorded November 9, 1976, as Plat No. 293, Teton County, Wyoming; Lot Eighteen (18) and Lots Twenty-one (21) through Thirty-seven (37), both inclusive of Teton Valley Ranch Subdivision, Unit II, according to that plat recorded May 20, 1977, as Plat No. 309, Teton County, Wyoming; Lots Thirty-eight (38) through Forty-nine (49), both inclusive, of Teton Valley Ranch Subdivision, Unit III, according to that plat recorded May 20, 1977, as Plat No. 310, Teton County, Wyoming; and Lots One (1) through Twenty-six (26), both inclusive, of Sheep Mountain Commercial Area, according to that plat recorded May 20, 1980, as Plat No. 408, Teton County, Wyoming. The above described tract of land contains 354.27 acres, more or less.

Fee title to the private land is being offered to the United States subject to a long-term (60 years) grazing and recreation permit and other reservations.

Two separate options or exchange proposals are being considered to acquire the Teton Valley Ranch property. The public land for both options involves Federal coal within the Point of Rocks coal tract located east of Rock Springs, Wyoming, in Sweetwater County. The separate options are discussed below:

Option 1. One option to acquire the Teton Valley Ranch property is to exchange an equal value amount of Federal surface and mineral estates except for oil and gas. Coal is the primary mineral resource involved. Values would be equalized with a cash payment. The following described public land will be exchanged to acquire the private land:

T. 21 N., R. 101 W., 6th P.M.,

Section 32: NE¼ ..... 160 acres

That portion of section 6 necessary to equalize values will be exchanged. At a minimum the following portion will be required to equalize values:

T. 20 N., R. 101 W., 6th P.M.,
Sec. 6: Described as follows:
Beginning at the NW corner of said section 6, thence south along west line of section 6, 3,715 feet to the southwest corner of section 6; thence east along south line of section 6, 4,160 feet to a point on that line; thence north 1,140 feet to a point; thence west 300 feet to a point; thence north 2,600 feet to a point on north line of section 6; thence west along north line of section 6, 3,840 feet to the point of beginning.

This legal description will be conformed to the official survey plat at a later date, and the parcel will be described by aliquot parts.

Approximately 347 acres.
Total 507 acres.

The Teton Valley Ranch has been appraised at $3,452,000. The public land and coal described above have been appraised at $3,454,673. To exchange on an equal value basis, an equalization payment to the United States of $2,673 is required. The amount used to equalize values will vary depending upon the actual legal description of the public lands used to acquire the private tracts.

Option 2. The second option involves the use of a "retained royalty interest" concept. Under this approach, the Teton Valley Ranch property plus a "retained royalty interest" of 3.18 percent on private coal would be exchanged for the Federal surface and mineral estate except for oil and gas within the Point of Rocks coal tract. A "retained royalty interest" of 3.18 percent would be reserved to the United States on the Federal coal patented to the exchange proponents. The private coal involved with this option is also located within the Point of Rocks coal tract.

The legal descriptions for the private coal offered as part of the retained royalty concept is described below:

T. 20 N., R. 101 W., 6th P.M.:	
Sec. 5, lots 1 to 4 inclusive, and S½	458.32
Sec. 7, N½NE¼	80.00
Sec. 9, S½	320.00
Sec. 15, S½SW¼	80.00
Sec. 17, E½NE¼	80.00
Sec. 21, NE¼, N½SE¼	240.00
Sec. 23, NW¼SW¼, S½SW¼	120.00
3Sec. 27, E½NE¼, NW¼NE¼	120.00
T. 20 N., R. 102 W., 6th P.M.	
Sec. 1, lots 1, 2, and 3, N½SE¼	180.03
T. 21 N., R. 101 W., 6th P.M.	
Sec. 33, All	640.00
Total	2,318.35

The public land (and coal) involved with this proposal is described below:

T. 20 N., R. 101 W., 6th P.M.:	
Sec. 6, Lots 1–6, E½SW¼, SE¼	437.96
Sec. 8, E½, N½NW¼, SE¼NW¼	440.00
Sec. 22, NW¼NW¼, S½N½, S½	520.00
Sec. 26, N½NW¼, SW¼NW¼	120.00
T. 21 N., R. 101 W., 6th P.M.:	
Sec. 32, NE¼	160.00
Sec. 34, SW¼	160.00
Total	1,837.96

The estimated fair market value of the Federal lands and coal interest is $6,230,855. The offered land plus the "retained royalty interest" would result in an equal value exchange proposal.

Acquisition of the Teton Valley Ranch is considered in the public interest. This private parcel is extremely valuable wildlife habitat, and the Ranch can be incorporated into the existing management of the National Elk Refuge. If the Teton Valley Ranch property is not acquired by the Federal Government, it may eventually be developed for subdivision purposes. Any subdivision development in this area would have substantial adverse impacts on wildlife management in the National Elk Refuge.

The public lands involve substantial coal resources and are located in the Point of Rocks coal tract. There are 17,026,000 tons of coal in place. Approximately 15,324,000 tons are recoverable. The average quality of coal is 9,841 Btu/lb. The coal is in the Almond formation at a maximum pit depth of 160 feet.

The Point of Rocks tract is located near Rock Springs, Wyoming, within the checkerborad land pattern of the old Union Pacific Land Grant. No logical coal mining unit can be created without controlling both Federal and private coal interests. Rocky Mountain Energy operates one small mine adjacent to Point of Rocks to serve one industrial customer. Rocky Mountain Energy will lease the coal from Teton Valley Ranch following the exchange. The possibility of additional coal sales provides an opportunity to expand this operation with the roughly 25 million tons of coal within the tract if both the privately and Federally owned coal is combined and considered jointly. All of these factors indicate that an exchange inolving all the Federal coal in the tract may be advantageous to the U.S. Government.

The "retained royalty interest" concept is being explored because of a fee coal exchange (as described in Option 1) would split a logical mining unit which may not be in the public interest. Under the "retained royalty interest" concept, the entire Point of Rocks coal tract could be authorized by a single administrative action (i.e., exchange under Option 2). The retained royalty interest concept would avoid a potential bypass of Federal coal as well as the associated loss of bonus, rental, and royalty income. An exchange using a "retained royalty interest" concept would also eliminate the need for future complex exchanges or for other administrative actions to develop the coal left as a result of a fee exchange.

The terms and conditions applicable to the Federal lands (Sweetwater County) involved in this exchange are:

1. A reservation to the United States of the right to construct ditches or canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945);
2. The land will be exchanged subject to valid existing rights of record on the date of conveyance;
3. Oil and gas will be reserved to the United States.
4. Possible retained royalty interest.
5. The land would be exchanged subject to memorandums of understanding for the protection of raptors and archeology.

A public meeting on this proposal was held on July 27, 1983, in Rock Springs, Wyoming. Numerous support documents (i.e., environmental assessment, land report, etc.) are now being prepared to support the planning amendment. The notice to amend the land use plan was published in the **Federal Register** on July 18, 1984. Any comments received as a result of the notice will be considered in processing the planning amendment. After the decision record is approved, 60 days will be provided for the Governor's consistency review of the plan amendment before proceeding with the action.

The publication of this notice segregates the public lands described above the settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in 2 years, whichever occurs first.

Grazing privileges of Chilton Land and Livestock Company and Rock Springs Grazing Assocition will be reduced upon completion of this exchange. The Chilton Land and Livestock Company waived its right to a 2-year continuance of this privilege on September 6, 1984. On July 13, 1983, the Rock Springs Grazing Association was given a 2-year notice of the planned disposal and proposed reduction.

Detailed information concerning this exchange is available at the Green River Resource Area Office, P.O. Box 1170, 79 Winston Drive, Rock Springs, Wyoming 82901.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Rock Springs District Manager, P.O. Box 1869, (Highway 191 North), Rock Springs, WY 82901. Of specific interest are any concerns or comments on the two options under consideration and any comments at all on the "retained royalty interest" approach. Any adverse or supportive comments will be evaluated

by the Wyoming State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

Hillary A. Oden,

State Director.

[FR Doc. 85-30880 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-22-M

Albuquerque District, New Mexico; Availability, and Request for Public Comment on the Proposed McKinley County Coal Fee Exchange

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of Availability, and Request for Public Comment on The Proposed McKinley County Coal Fee Exchange.

SUMMARY: The Bureau of Land Management has prepared the Final Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal. The document is available for public review. There will be two public hearings on the exchange, and a 30-day comment period/protest period. The Final Amendment/Environmental Assessment analyzes the impacts of exchanging Federal coal for private coal in order to consolidate Federal coal tracts. Also analyzed are the impacts associated with the Federal Government obtaining mineral estate in Chaco Culture National Historic Park and under seven Chacoan outliers. The document discusses in detail both environmental and geological issues and the basis for the equal value determination.

Comments will be accepted on the Final Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal until February 3, 1986. The public is invited to submit comments on all public interest factors of the exchange.

Comments should be sent to: Paul Applegate, District Manager, Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87197-6770.

In addition, any person who participated in the planning process and has an interest that would be adversely affected by approval of the Final Amendment/Environmental Assessment may file a written protest with the Director of the BLM by February 3, 1986. The protest must contain the name, mailing address, telephone number, and interest of the person filing the protest; a statement of the issues being protested; copies of all documents addressing the issues submitted during the planning process by the protesting party, or an indication of the date the issues were discussed for the record; and a concise statement explaining why the State Director's planning decision is believed to be wrong. Any protests should be sent to the Director of the BLM at the following address: Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

The Director will render a prompt written decision on the protest, setting forth the reasons for the decision. The decision will be sent to the protesting party by certified mail and will be the final decision of the Department of the Interior.

There will be two hearings to obtain public comment on all public interest factors of the proposed exchange including the anti-trust consequences. The transcripts of the public hearing and all comments will be sent to the Department of Justice to determine the anti-trust consequences of the exchange.

DATES: The comment period and protest period will end February 3, 1986. Two public hearings will be held on January 23, 1986, one at 1:30 p.m. and the other at 7 p.m.

ADDRESS: The hearings will be held at: The Classic Hotel, "The Registry Room," 6815 Menaul Blvd., N.E., Albuquerque, New Mexico.

ADDITIONAL INFORMATION: For additional information and to obtain copies of the final document contact: Mary Zuschlag, Project Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87110, Commercial (505) 766-8280, FTS 474-8280.

Dated: December 12, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-30906-Filed 12-30-85; 8:45 am]

BILLING CODE 4310-FB-M

[A-20241]

Realty Action, Direct Sale of Public Land in Cochise County, AZ

AGENCY: Bureau of Land Management, Safford District, Interior.

ACTION: Notice of Realty Action, Direct Sale of Public Lands in Cochise County, Arizona.

SUMMARY: The following lands have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2750; 43 U.S.C. 1713 at no less than the appraised fair market value.

Legal description	Acres	Appraised value
Gila and Salt River Meridian, Arizona T. 18 S., R. 21 E., sec. 6, lot 7, SE¼SW¼	78.14	$66,400

The land is being offered to the Apache Powder Company by direct sale at the appraised fair market value. This land is located within the industry-set buffer zones of three magazines used for the storage of explosives. No other bids or bidders will be considered.

The land is not required for any Federal purpose. The parcels are difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations.

All minerals, except oil and gas resources, will be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b). Purchasers of the affected parcels will be required to submit a non-returnable filing fee in the amount of $50.00 to cover the processing costs of conveying the available mineral interests. Failure to do so will result in disqualification.

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 and for oil and gas resources. The patent will also be issued subject to oil and gas lease A 10774 and an electric distribution line right-of-way (A 20355) and a floodplain restriction.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Sale Procedures

The designated bidder will be required to submit payment of at least 20 percent of the fair market value by cash, certified or cashier's check, or money order to the BLM at 425 East 4th Street, Safford, Arizona 85546 on March 10, 1986.

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the

same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

DATE: For a period of 45 days from the date of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the State Director who may sustain, 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.

SUPPLEMENTARY INFORMATION: Detail information concerning reservations, conditions, terms, appraised price, bidding procedures and other items may be obtained from the Safford District Office or by calling (602) 428-4040 during the office hours 7:45 to 4:15 MST.

Dated: December 9, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-30902 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-32-M

[N-30967]

Realty Action Exchange of Public and Private Lands in Elko County, NV

On November 13, 1984 a Notice of Realty Action was issued for a land exchange between Loyd and Alta Sorenson, the Humboldt National Forest and the Bureau of Land Management. Since the publication it was agreed among the parties involved that the land exchange proposal would be modified to include additional lands. The additional lands, both offered and selected, were originally included in the land exchange but deleted prior to the notice's November 23, 1984 publication in the **Federal Register** because of disagreements relative to their value. A reappraisal by an independent appraiser allowed negotiations to be reopened resulting in the additional land's inclusion in the land exchange proposal.

In order that interested parties may fully understand the proposal this Notice of Realty Action lists all lands involved including those in the original publication.

The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 34 N., R. 60 E.,
Sec. 4, lots 3, 4;
Sec. 8, S½SE¼;
Sec. 16, SW¼NW¼, NW¼SW¼;
Sec. 22, N½, N½SW¼, SE¼;
Sec. 24, W½SW¼.
T. 35 N., R. 62 E.,
Sec. 32, E½.

The areas described above contain 1,201.05 acres.

In exchange for these lands the United States will acquire the following described private lands within the Humboldt National Forest from Loyd and Alta Sorenson:

Mount Diablo Meridian, Nevada

T. 34 N., R. 59 E.,
Sec. 13;
Sec. 25, NW¼, N½NE¼SW¼.
T. 34 N., R. 61 E.,
Sec. 3;
Sec. 11, Lots 2-7 inclusive, S½NW¼, N½SW¼, N½SE¼;
Sec. 15.
T. 35 N., R. 61 E.,
Sec. 29, E½;
Sec. 33.

The areas described above contain 3,677.20 acres.

The purpose of the exchange is to acquire higher multiple use value lands. In addition, the exchange would provide lands needed in support of a Federal program within an area of the Humboldt National Forest that is currently difficult to manage because of fragmented ownership patterns. The exchange is consistent with both agencies' land use planning and the public interest will be served by completing the exchange. The above described lands have been appraised and their values determined to be equal.

Patent, when issued, will reserve to the United States a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890; 43 U.S.C. 945. Mineral estates will be transferred with public and private lands.

The patent will be subject to:

1. All valid existing rights.
2. Those rights for powerline purposes which have been granted to Wells Rural Electric Company, its successors or assigns by Permit No. Nev-058476 under the Act of March 4, 1911, as amended (43 U.S.C. 961).
3. Those rights for highway purposes which have been granted to the Nevada State Highway Department, its successors or assigns by Permit No. Nev-043573 under the Act of November 9, 1921, as amended (23 U.S.C. 317).
4. Those rights for highway purposes which have been granted to the Nevada State Highway Department, its successors or assigns by Permit No. Nev-045052 under the Act of November 9, 1921, as amended (U.S.C. 317).
5. Range Improvement Fence 1021.

The disposal of the E½, section 32, T. 35 N., R. 62 E., MDM will result in the reduction of the grazing preference of Dr. Blair Johns by 22 AUM's and Mr. Robert Peltier by 6 AUM's. Both permittees were notified by letter's dated March 10 & 11, 1982 respectively, that these reductions would be necessary.

Publication of this notice in the **FEDERAL REGISTER** will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a "Termination of Segregation".

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, NV 89801.

Dated: December 3, 1985.

Rodney Harris,

District Manager.

[FR Doc. 85-30904 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-HC-M

Realty Action; Exchange of Public and Private Lands in Bowman County, ND

AGENCY: Bureau of Land Management, Dickinson District Office, Interior.

ACTION: Notice of Realty Action—Exchange M-62060 (ND).

SUMMARY: The following described lands have been examined and identified as suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Fifth Principal Meridian, North Dakota

T. 131 N., R. 103 W.
Section 30, Lot 4
Section 34, NE¼NW¼, NW¼SW¼
Section 35, SE¼NE¼
T. 129 N., R. 104 W.
Section 31,, Lots 1, 3, 4
Section 32, SW¼SW¼
T. 130 N., R. 104 W.
Section 9, NW¼SW¼
Section 18, Lot 4
Section 19, S½SE¼
Section 21, S½SE¼
T. 129 N., R. 105 W.
Section 5, SE¼NW¼, SW¼SW¼, SE¼SE¼

Section 23, SE¼SE¼
Section 24, SW¼NE¼, NW¼NW¼, SW¼SE¼
Section 25, N½NW¼
Section 26, NE¼NE¼
Section 35, S½SE¼
T. 130 N., R. 105 W.
Section 6, Lot 8
Section 7, NE¼SW¼
Section 8, S½SW¼
Section 10, NW¼SW¼, SE¼SW¼, SW¼SE¼
Section 11, SE¼NW¼, E½SW¼
Section 13, S½SE¼
Section 18, E½SW¼
Section 22, SW¼SW¼
Section 24, N½NE¼, NE¼NW¼
Section 32, SE¼SE¼
Section 33, E½NE¼
T. 131 N., R. 105 W.
Section 10, N½NW¼, SW¼NW¼
Section 15, N½ SW¼
Section 17, SE¼NW¼
Section 21, SE¼SW¼, S½SE¼
Section 22, SW¼NW¼
Section 26, SW¼NW¼
Section 27, SE¼SE¼
Section 30, Lots 3, 5, SE¼NW¼
Section 31, Lots 1, 6
Section 34, NE¼, NE¼NW¼, N½SE¼
T. 132 N., R. 105 W.
Section 26, W½NW¼, S½SW¼
Section 28, SE¼NW¼
T. 129 N., R. 106 W.
Section 3, SE¼NW¼, NE¼SW¼, S½SW¼
Section 4, Lots 5, 6, 7
Section 11, N½NE¼, SE¼NE¼
Section 12, NW¼NW¼
Section 15, Lots 1, 2, NE¼NE¼, E½SE¼
Section 18, Lots 2, 3, NE¼SE¼
Section 20, S½NW¼
Section 21, NW¼SW¼
Section 22, E½NE¼
T. 130 N., R. 106 W.
Section 1, SE¼SE¼
Section 2, Lot 11
T. 131 N., R. 106 W.
Section 6, Lot 4
T. 132 N., R. 106 W.
Section 28, NW¼SW¼, NE¼SE¼
T. 129 N., R. 107 W.
Section 13, NE¼SE¼
Section 24, E½SE¼, SW¼SE¼
T. 131 N., R. 107 W.
Section 2, Lots 3, 4, S½NW¼
T. 132 N., R. 107 W.
Section 26, NE¼NE¼, SW¼, S½SE¼

Aggregating ±4797.02 acres.

Note: The entire 4797.02 acres listed above will not be used in this proposed exchange. Only those lands necessary to obtain sufficient dollars and equalize values will be exchanged.

In exchange for these public lands, the United States will acquire the surface estate in the following described lands:

Fifth Principal Meridian, North Dakota

T. 131 N., R. 106 W.
Section 10, W½
Section 15, NW¼
Section 22, N½, N½SW¼, NW¼SE¼
Section 23, Lots 2, 3, W½NE¼, NE¼NW¼NW¼, NE¼NW¼N W¼NW¼, S½NW¼NW¼, NW¼, S½NW¼NW¼, SW¼, NW¼, SW¼, W½SE¼
Section 24, Lot 6
Section 25, Lot 2, 3, W½NW¼
Section 26, N½, NW¼SW¼, NE¼SE¼
Section 27, NW¼NE¼, S½NE¼, N½SE¼, SW¼SE¼

Aggregating ±2168.85 acres

Comment Period: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a decision for the Department of Interior. Parties adversely affected by the decision have the right to appeal to the Interior Board of Land Appeals. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this exchange, including planning documents, the environmental assessment and land report is available for review at the Dickinson District Office.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange of public lands will be subject to:

1. Reservation of all minerals in the lands to the United States together with the right to explore, prospect for, mine and remove some under applicable law and regulations;

2. Reservation of right-of-way for ditches or canals to the United States pursuant to with 43 U.S.C. 945;

3. All valid and existing rights and reservations of record.

This exchange is consistent with the Bureau of Land Management policies and planning. The public interest will be served by completion of this exchange.

Dated: December 10, 1985.

Gene C. Campbell,

Acting, District Manager.

[FR Doc. 85-30905 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-DN-M

[OR 38510]

Realty Action; Direct Sale of Public Land in Baker County, OR

SUMMARY: The following lands are suitable for sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

Serial No.: OR 38510.
Legal Description: T 8 S., R 45 E., WM; Sec. 28: W½W½SE¼SW¼
Acreage: 10.00
Value: $6,000
Minimum Bid Deposit: 30%
Bidding Procedure: Direct.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

The sale will be held on March 19, 1986, at the Bureau of Land Management, Baker Resource Area Headquarters, New Federal Building, P.O. Box 987, Baker, Oregon 97814.

The subject parcel is difficult and uneconomical to manage as part of the public lands because of its characteristics, and is not suitable for management by another Federal agency. The sale will resolve a nonwillful unauthorized occupancy and, thereby, serve an important public objective. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Bidders must be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state of Oregon.

Direct sale procedures are being used since a competitive sale is not appropriate and the public interest would best be served by the direct sale because this land action would resolve a nonwillful unauthorized use and occupancy. Further detailed information concerning the sale, including the planning documents, environmental assessment, land report, and record of decision, are available for review at the Baker Resource Area Headquarters, New Federal Building, Baker, Oregon.

The parcel identified by Serial No. OR 38510 is being offered to Ms. Maryjo Stephens using direct sale procedures authorized under 43 CFR 2711.3-3. The land will be sold at fair market value to Ms. Maryjo Stephens without competitive bidding. The prospective purchaser is required to render a minimum deposit of 30 percent of the purchase price by March 19, 1986, and

the balance within 180 days of the sale date. The bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for at least 30 percent of the selling price. The entire purchase price may be rendered at this time. If the bid/purchase price is made by mail, a separate sealed envelope should be enclosed within the mailing envelope and clearly marked, in the lower left hand corner, "Bid or Purchase for Public Land Sale OR 38510, Baker County, Oregon, March 19, 1986". If the deposit is not submitted or the full purchase price not rendered within 180 days of the sale date, the preference right is canceled, the deposit will be forfeited, and the parcel may be sold through competitive bidding procedures.

TERMS AND CONDITIONS OF SALE: The terms and conditions applicable to this sale are:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act 43 U.S.C. 1719. The prospective purchaser must include with her bid deposit a non-refundable $50.00 filing fee for the conveyance of the mineral estate.

3. The patent will be issued subject to all valid existing rights and reservations of record.

4. The Bureau of Land Management may accept or reject the offer, or withdraw the land or interest in the land from sale, if in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

5. The sale parcel will be SUBJECT TO:

a. Such rights for public road purposes as Baker County, or its successors in interest may have pursuant to a road right-of-way RS 2477 (43 U.S.C. 932).

b. Such rights for Tobin Irrigation Ditch purposes as John W. Stansberry, President of Tobin Irrigation Ditch Company, or his successors in interest may have, pursuant to the Act of July 26, 1866 (43 U.S.C. 661).

COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Baker Resource Area Headquarters, Bureau of Land Management, New Federal Building, P.O. Box 987, Baker, Oregon 97814, telephone (503) 523-6391, Ext. 324.

Objections will be reviewed by the District Manager, Vale District Office, 100 Oregon St., P.O. Box 700, Vale, Oregon 97918 who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 10, 1985.

Jack D. Albright,

Area Manager.

[FR Doc. 85-30903 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 21, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 15, 1986.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Boulder County

Boulder, *Boulder Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 1905 Fifteenth St.

Delta County

Delta, *Delta Post Office and Federal Building (U.S. Post Offices in Colorado, 1900—1941 TR)*, 360 Meeker St.

El Paso County

Colorado Springs, *Colorado Springs Post Office and Federal Courthouse (U.S. Post Offices in Colorado, 1900—1941 TR)*, 210 Pikes Peak Ave.

Manitou Springs, *Manitou Springs Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 307 Canon Ave.

Fremont County

Canon City, *Canon City Post Office and Federal Building (U.S. Post Offices in Colorado, 1900—1941 TR)*, Fifth St. and Macon Ave.

Florence, *Florence Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 121 N. Pikes Peak St.

Garfield County

Rifle, *Rifle Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, Railroad Ave. and Fourth St.

Las Animas County

Trinidad, *Trinidad Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 301 E. Main St.

Logan County

Sterling, *Sterling Post Office, Federal Building, and Federal Courthouse (U.S. Post Offices in Colorado, 1900—1941 TR)*, Third and Popular Sts.

Montrose County

Montrose, *Montrose Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 321 S. First St.

Morgan County

Fort Morgan, *Fort Morgan Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 300 State St.

Prowers County

Lamar, *Lamar Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 300 S. Fifth St.

Rio Grande County

Monte Vista, *Monte Vista Post Office and Federal Building (U.S. Post Offices in Colorado, 1900—1941 TR)*, Washington and Second Ave.

DISTRICT OF COLUMBIA

Washington

Plymouth (The), 1236 11th St., NW

GEORGIA

Fulton County

Atlanta, *Brookhaven Historic District*, E. of Peachtree-Dunwoody Rd., and N. & E. of Peachtree Rd. (also in DeKalb County)

Tift County

Tifton, *Tifton Commercial Historic District*, Main St., Love Ave., Second and Third Sts.

LOUISIANA

Caldwell Parish

Columbia, *Shepis Building*, Main St.

Rapides Parish

Alexandria, *Masonic Building*, 4th and Johnston Sts.

MAINE

Kennebec County

Monmouth, *Monmouth Academy*, Academy Rd.

MASSACHUSETTS

Hampden County

Holyoke, *United States Post Office-Holyoke Main*, 650 Dwight St.

MISSOURI

Cass County

Belton, *Wilson, Cowan, House*, 206 S. Scott

St. Louis (Independent City)

Neighborhood Gardens Apartments, 1205 N. 7th St.

NORTH DAKOTA

Dunn County

New Hradec, *Saints Peter and Paul Church*

Grand Forks

Grand Forks, *Wheeler, Dr. Henry, House*, 420 Franklin St.

Stutsman County

Jamestown, *Seiler Building*, 110 First St. East

OHIO

Lucas County

Toledo, *Westmoreland Historic District*, Roughly bounded by Bancroft St., Upton Ave., Potomac Dr., and Parkside Blvd.

PENNSYLVANIA

Bradford County

Tioga Point Farm Prehistoric District (36Br3,48,49,51,52,61)

Philadelphia County

Philadelphia, *Hogue, Robert M., House*, 100 Pelham Rd.

VIRGINIA

Culpeper County

Culpeper vicinity, *Elwood*, US 522 W.

WEST VIRGINIA

Wood County

Parkersburg, *Avery Street Historic District*, Roughly bounded by Spring, Quincy, Eighth, Market, Nineteenth, and Avery Sts.

WISCONSIN

Milwaukee County

Milwaukee, *Clark Row House (West Side Area MRA)*, 2103–2109 W. Kilburn Ave.

[FR Doc. 85–30807 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-70-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-3]

Consolidated Edison Co. of New York, Inc.; Condsideration of Issuance of Amendment to Provisional Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–5 issued to Consolidation Edison Company of New York, Inc. (the licensee) for Indian Point Unit No. 1, (the facility) located in Westchester County, New York. The amendment is in response to the licensee's application dated October 17, 1980, as revised October 13, 1981, related to decommissonioning the facility.

The facility is a 615 MWt pressurized water reactor located in Westchester County, New York. The facility has been shut down since October 31, 1974, and all spent fuel has been transferred from the reactor to the spent fuel storage pool. By Order dated June 19, 1980, the Commission revoked authority to operate the facility as a nuclear reactor and required the licensee to submit a decommissioning plan. The licensee's application dated October 17, 1980, as revised October 13, 1981, was in response to the Commission's Order.

The licensee proposes to retain the facility in a safe storage status until the expiration date of the Indian Point Unit No. 2 license on October 14, 2006. At that time the residual radioactive material would be removed from the facility such that it could be released for unrestricted access and Provisional License No. DPR–5 terminated. The spent fuel would remain stored onsite in the interim until a Federal repository is available.

The amendment would revise the license to a possess-but-not operate status, approve the licensee's decommissioning plan and renew the license for a period of time up to October 14, 2006, or such lesser term as the Commission determines to be appropriate. License No. DPR–5 was issued as a provisional operating license, and had continued in effect since 1969 under a timely application for a full-term operating license. The licensee's plan to decommisson the facility makes its application for a full-term operating license moot.

Prior to issuance of an amendment the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By January 30, 1986, the licensee may file a request for a hearing with respect to issuance of the subject authorization and amendment, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to inervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commisson's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene becomes parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of

the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow, Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Brent L. Brandenburg, Esquire, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be gtrnated based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's decommissioning plan dated October 17, 1980 as revised October 13, 1981, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Bethesda, Maryland, this 18th day of December 1985.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 85-30914 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

Iowa; Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement with State of Iowa.

SUMMARY: Notice is hereby given that on December 11, 1985, Nunzio J. Palladino, Chairman of the Nuclear Regulatory Commission and on December 13, 1985, Terry E. Branstad, Governor of the State of Iowa signed the Agreement set forth below for discontinuance by the Commission and assumption by the State of certain Commission regulatory authority. The Agreement is published in accordance with the requirements of Pub. L. 86-373 (section 274 of the Atomic Energy Act of 1954, as amended). The Exemptions from the Commission's licensing authority have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in title 10 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492-9887.

SUPPLEMENTARY INFORMATION:

Agreement Between the United States Nuclear Regulatory Commission and the State of Iowa for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapter 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Iowa is authorized under Chapter 136C, Code of Iowa, to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Iowa certified on August 22, 1985, that the State of Iowa (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on December 6, 1985, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore

and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on January 1, 1986, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Washington, District of Columbia, in triplicate, this 11th day of December, 1985.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Done at Des Moines, Iowa, in triplicate, this 13th day of December, 1985.

For the State of Iowa.

Terry E. Branstad,

Governor.

Dated at Bethesda, Maryland, this 19th day of December, 1985.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 85-30916 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. LRP; ASLBP No. 86-519-02 SP]

Inquiry Into Three Mile Island Unit 2 Leak Rate Data Falsification; Appointment of Presiding Board To Conduct a Legislative Hearing

December 20, 1985.

Pursuant to the Commission's Order and Notice of Hearing dated December 18, 1985 (CLI-85-18), a Presiding Board is hereby appointed to conduct a hearing and to render a recommended decision concerning the facts surrounding the reactor coolant system leak rate data falsifications at Three Mile Island, Unit 2 (TMI-2) prior to the March 28, 1979 accident. The procedures to be employed and the issues to be addressed by the Presiding Board are set forth in the Commission's Order which provides for a legislative hearing. Except as noted in the Commission's Order, the powers and procedures set forth in Subpart G of 10 CFR Part 2 shall not apply to this proceeding.

The names and addresses of the members of the Presiding Board are:

Administrative Judge James L. Kelley, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 20th day of December, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-30913 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 4.16, Revision 1, "Monitoring and Reporting Radioactivity in Releases of Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Processing and Fabrication Plants and Uranium Hexafluoride Production Plants," provides methods acceptable to the NRC staff for developing effluent monitoring programs and from monitoring and reporting effluent data by licensees.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of active guides may be purchased at the current Government Printing Office price. Information on current prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 23rd day of December 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-30915 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14862; File No. 812-6262]

Drexel Burnham Lambert Inc.; Application and Temporary Order

December 20, 1985.

Notice is hereby given that Drexel Burnham Lambert Incorporated ("Drexel" or the "Applicant"), filed an application on December 18, 1985 requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), exempting Drexel from the provisions of Section 9(a) of the Act in respect of the circumstances described below and a temporary exemption from section 9(a) pending the Commission's determination of the application for a permanent exemption.

Drexel states that it serves as investment adviser and distributor (principal underwriter) for the Drexel Burnham Fund, the DBL Cash Fund Inc., the Drexel Series Trust, the DBL Tax-Free Cash Fund Inc. and Benefactors Money Market Fund Inc., and Drexel or affiliates of Drexel serve as investment adviser of the Maxim Seres Fund Inc. and the Drexel Bond-Debenture Trading Fund (collectively, the "Funds"), each of which Drexel states is an investment company registered under the Act. Drexel states that from time to time it acts as a depositor and sponsor for unit investment trusts (the "UITS") registered as investment companies under the Act. In addition, Drexel states that it may serve as an investment adviser, principal underwriter or depositor for other registered investment companies in the future.

Drexel states that it is a registered broker-dealer and registered investment adviser. Drexel states that as distributor (principal underwriter) for the Funds, it engages in the sale and redemption of shares of the Funds with their shareholders, as well as additional investors in the Funds. Drexel also makes a secondary market for units of the various series of UITs it has sponsored and anticipates doing so with respect to UITs sponsored by it in the future.

Applicant states that on or about December 19, 1985 Drexel and a managing director in its corporate finance department, Stanley S. Trotman, Jr. ("Trotman"), each consented to the entry of a final judgment and order of permanent injunction in an action commenced by the Commission in the United States District Court for the Southern District of New York entitled *Securities and Exchange Commission* v. *Drexel Burnham Lambert Incorporated and Stanley S. Trotman, Jr.*, 85 Civ. *9855*. The Commission's complaint alleged that Applicant and Trotman had violated sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 in connection with Drexel's due diligence investigation for the underwriting of approximately $25.6 million of securities issued by Flight Transportation Corporation ("Flight") in June 1982. Drexel states that, without admitting or denying any of the non-jurisdictional allegations in the complaint, it and Trotman each consented to the entry of a final judgment enjoining and restraining them from engaging in any transaction, practice or course of business in violation of sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 in connection with the offer or sale of any securities and providing for other equitable relief with respect to due diligence investigations for public securities offerings to be underwritten by Drexel.

Applicant states that the activities forming the basis for the consents to the injunctions took place during the period from approximately November 1981 to June 14, 1982, during which time Drexel acted as co-lead manager for two public offerings of Flight securities.

Applicant states that on June 18, 1982, the Commission halted trading in Flight securities and commenced an injunctive action against Flight and its chairman in the United States District Court for the District of Minnesota. Applicant states that on June 23, 1982, it commenced a class action in the District Court in Minnesota against Flight and others on behalf of all purchasers of Flight securities in the two June 1982 offerings. Applicant states that its lawsuit sought, *inter alia*, imposition of a constructive trust on the proceeds of those offering for the benefits of the purchasers. Applicant states that as a result of the Commission's prompt commencement of its action and the filing of Drexel's constructive trust claim, most of the proceeds of these offerings were seized from a bank in New Jersey and ultimately placed in a segregated account under the supervision of the District Court in Minnesota.

Applicant states that in the months that followed, several civil class action lawsuits were commenced in the District of Minnesota, in many of which Drexel was named as a defendant, and that in April 1984, Drexel entered into a settlement agreement disposing of all claims asserted by and against it in connection with Flight. Applicant states that the net effect of the settlement is that Drexel and the underwriting syndicates for those offerings have paid $3,800,000 in cash to settle the class actions and have made additional payments to settle certain other claims against them that were prosecuted outside the District of Minnesota.

On Februry 23, 1983, the Commission issued a formal order of private investigation entitled *In the Matter of Trading in the Securities of Flight Transportation Corporation*. Applicant states that following the Commission's private investigation and in settlement thereof, Drexel and Trotman consented to the entry of the above-referenced injunctions without admitting or denying any of the non-jurisdictional allegations of the Commission's complaint.

Applicant states that, subsequent to the events that formed the basis for the consents, it conducted a comprehensive review of its procedures for due diligence investigations in connection

with public offerings and implemented certain changes in those procedures, including *inter alia*, placing added emphasis on contacts with third parties.

Section 9(a) of the Act, insofar as it is pertinent here, disqualifies any person or any company with which such person is affiliated from serving or acting in the capacity of an investment adviser, principal underwriter or depositor of any registered investment company, if such person has been permanently or temporarily enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Applicant does not concede that the injunctions would disqualify it under section 9(a) of the Act. In order, however, to resolve fully any questions as to the applicability of that Section and in full compliance with all applicable Federal securities laws, Applicant has submitted this Application pursuant to section 9(c) of the Act for exemption from the provisions of section 9(a).

Section 9(c) of the Act provides that upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on appropriate temporary or other conditional basis if it is established that: (a) The prohibitions of section 9(a), as applied to a specific person, are unduly or disproportionately severe; and (b) the conduct of that person has been such as not to make it against the public interest or protection of investors to grant the application.

In support of its position that the Commission should grant Drexel an exemption from the provisions of section 9(a) of the Act, Drexel has represented the following:

1. The allegations of the Commission's complaint, the terms of the injunctions and the facts and circumstances to which they relate in no way involve any activities of the Funds, Drexel's activities on behalf of the Funds or the UITs or Drexel's activities with respect to any of its other investment advisory or brokerage clients and customers. More than three years have elapsed since the activities alleged in the complaint took place.

2. The injunctions were consented to without admitting or denying the non-jurisdictional allegations of the complaint and without consenting to the adjudication of any wrongdoing or liability.

3. Drexel has paid substantial amounts in settlement of private civil class actions and other actions arising out of the two June 1982 public offerings of Flight and has taken steps to improve upon the due diligence investigations it undertakes in connection with public securities offerings for which it acts as lead underwriter, including, *inter alia*, placing added emphasis on contacts with third parties.

4. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Drexel because they would deprive the Funds of Drexel's investment advisory and distribution services and deprive the UITs of Drexel's market making function. The prohibitions of section 9(a) could thus operate significantly to the detriment of the financial interests of the Funds and their shareholders and unitholder of the UITs, none of which was affected in any way by the events that gave rise to the complaint and the injunctions. Trotman is not involved in the activities of the Funds or the UITs or in the activities of Drexel and its affiliates in connection therewith.

5. The prohibitions of section 9(a), to the extent applicable, would unfairly deprive Drexel of its ability to serve as an investment adviser, principal underwriter or depositor to other registered investment companies in the future.

6. The events that gave rise to the complaint and the injunctions are not such as to make it against the public interest or protection of investors to grant Applicant's application.

7. In order to maintain uninterrupted operations of the Funds and the UITs, it 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 that the temporary exemption requested herein be issued forthwith.

8. In making this application, Applicant acknowledges, understands and agrees that this application and any temporary exemption issued herein shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemptions from statutory requirements, including, without limitation, the consideration of the instant application for a permanent exemption pursuant to Section 9(c) from the provisions of section 9(a) of the Act or the revocation or removal of any temporary exemption granted in connections with this application.

9. Applicant has never before applied for an exemption from the provisions of section 9(a) of the Act.

10. In consenting to a settlement of the Commission's civil action, Applicant has relied on an agreement by the Staff of the Commission not to oppose its application for temporary and permanent exemptions from the provisions of section 9(a) of the Act, based solely on the injunctions.

Accordingly, the application concludes that Applicant believes that granting the requested order and temporary order, pursuant to section 9(c) of the Act, exempting Drexel from the provisions of section 9(a) of the Act, is not inconsistent with the public interest and the protection of investors and the purposes fairly intended by the policy of the Act.

The Commission has considered the matter and finds that:

(1) The prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Drexel in this case; and

(2) In order to maintain the uninterrupted services provided by Drexel to the Funds and the UITs, it is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act, that a temporary order be issued forthwith.

Accordingly, it is hereby ordered that, pursuant to section 9(a) of the Act, Drexel be and hereby is granted a temporary exemption from the prohibitions of section 9(a) of the Act resulting from the injunctions issued against Drexel and Trotman, pending final determination by the Commission of the application for an order granting an exemption from those prohibitions; provided, however, that ths temporary exemption is conditioned upon Applicant's compliance with its undertakings as set forth above.

Notice is further given that any interested person may, not later than January 17, 1986 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant 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 contemporaneously with the request. As provided in Rule 0-5 of the Rules and Regulations promulgated under the Act,

an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-30863 Filed 12-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23960; 70-7193]

Kingsport Power Co. et al.; Proposed Issuance and Sale of Long-Term Notes to Banks Under Term Loan Agreements

December 23, 1985.

Kingsport Power Company ("Kingsport"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, Ohio Valley Electric Corporation ("OVEC"), P.O. Box 468, Piketon, Ohio 45661 and Wheeling Electric Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003 (individually and collectively hereafter "Declarant" and "Declarants"), electric utility subsidiaries of American Electric Power Company, Inc. ("American"), 1 Riverside Plaza, Columbia, Ohio 43215, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b) and 50(a)(2) thereunder.

OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation, operate electric generation facilities for the principal purpose of supplying electric power to an agency of the United States of America. The capital stock of OVEC is jointly owned by American, Allegheny Power System, Inc., a registered holding company, and several other utility companies, which, pursuant to a power agreement, provide supplemental power to, and purchase surplus from, OVEC and its subsidiary.

By orders dated September 13, 1982, October 8, 1982, December 21, 1982, December 22, 1982, December 29, 1982 and March 23, 1983. (HCAR Nos. 22633, 22663, 22791, 22797, 22805 and 22888, respectively) the Commission authorized Kingport, Michigan, OVEC and Wheeling to enter into fixed rate term loan agreements with Citibank, N.A. ("Citibank") for up to $10 million each.

Declarants request authorization to refinance the above maturing fixed rate term loan agreements with Citibank (the "Citibank Agreements") and the unsecured promissory notes thereunder by each issuing up to $10,000,000 aggregate principal amount of unsecured promissory notes ("Notes") in connection with borrowings from one or more commercial banks, pursuant to proposed Term Loan Agreements ("Agreements"), for terms of not less than two nor more than ten years. The Notes of Kingsport, OVEC and Wheeling, will bear interest on the unpaid principal amount at a fixed rate of interest not greater than 13% per annum. In the case of Michigan, the Notes would bear interest at one of the following interest rate pricing bases to be selected by Michigan: (1) A fixed rate of interest not greater than 13% per annum (the "Fixed Rate"), (2) A fixed interest rate for one, two, three or six months equal to ½ of 1% per annum above the applicable London Interbank Offering Rate or (3) a floating interest rate equal to the bank's prime rate (as defined in the Agreement). Michigan's Agreement would further provide that Michigan could switch among the above pricing bases on which its Notes would bear interest, subject to certain exceptions, provided that once the Fixed Rate pricing basis was selected it would irrevocably be the interest rate of its Notes until maturity.

No compensating balances shall be maintained or fees paid in the form of substitute interest by the Declarants under the Agreements. The Agreements further specify that, in the event a Note is paid prior to maturity in whole or in part, a Declarant shall pay a fee to the lending bank calculated to reimburse the bank for interest lost, if any, as a result of the prepayment. Declarants will apply all of the proceeds of the Note or Notes, at the time of such borrowings, to the repayment of maturing notes evidencing indebtedness under the Citibank Agreements.

The 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 January 16, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the Declarants at the addresses 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 declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30864 Filed 12-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14863; File No. 812-6162]

Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., et al.; Application for Order Pertaining to Exchange Offers and Contingent Deferred Sales Loads

December 20, 1985.

Notice is hereby given that Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., Prudential-Bache California Municipal Fund, Prudential-Bache Equity Fund, Inc., Prudential-Bache Global Fund, Inc., Prudential-Bache Government Plus Fund, Inc., Prudential-Bache Government Securities Trust, Prudential-Bache Growth Opportunity Fund, Inc., Prudential-Bache High Yield Fund, Inc., Prudential-Bache High Yield Municipals, Inc., Prudential-Bache MoneyMart Assets Inc., Prudential-Bache Municipal Series Fund, Prudential-Bache Option Growth Fund, Inc., Prudential-Bache Quality Income Fund, Inc., Prudential-Bache Research Fund, Inc., Prudential-Bache Tax-Free Money Fund, Inc. and Prudential-Bache Utility Fund, Inc. (collectively, "Funds") and Prudential-Bache Securities Inc. ("Prudential-Bache", and together with "Funds", "Applicants") each at One Seaport Plaza, New York, NY 10292, filed an application on July 31, 1985, and an amendment thereto on December 10, 1985, for a Commission order (i) pursuant to section 11(a) of the Investment Company Act of 1940 ("Act") permitting certain offers of exchange among the Funds and any future funds principally distributed by Prudential-Bache and (ii) pursuant to section 6(c) of the Act exempting those exchanges from the provisions of section 22(d) of the Act to permit variation, deferral or waiver of any otherwise applicable contingent deferred sales load ("CDSL"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which

are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicants represent that each Fund is registered as an open-end investment company under the Act. Applicants also state that Prudential-Bache is the principal distributor for each Fund and maintains a continuous public offering of the shares of each Fund at their respective net asset values.

Applicants state that some of the Funds impose no sales load ("No-Load Funds") and that, pursuant to a Commission order issued July 1, 1985 (Investment Company Act Release No. 14615), some of the Funds may impose a CDSL ("CDSL Funds"). Applicants also state that some of the CDSL Funds previously imposed an initial sales load ("Former Load Funds") rather than a CDSL.

Applicants propose the following transactions:

(1) Shares of any CDSL Fund may be exchanged for shares of any other CDSL Fund without imposition of a CDSL until subsequent redemption, at which time the rate of the CDSL of the Fund from which the shares are being redeemed will be imposed but calculated from the date of the initial purchase of the exchanged shares;

(2) Shares of any CDSL Fund may be exchanged for shares of a No-Load Fund without imposition of the CDSL until subsequent redemption, at which time the rate of the CDSL of the Fund from which the shares are being redeemed will be imposed but calculated without regard to the time such shares were held in the No-Load Fund; and

(3) Shares of a Former Load Fund may be exchanged for shares of any CDSL Fund without imposition of a CDSL at the time of exchange or subsequent redemption. Applicants state that each exchange would be subject to the minimum investment requirements of the Fund shares to be acquired. Applicants submit that the proposed exchanges will not dilute the assets of any Fund.

Applicants request an order under section 11(a) of the Act permitting such exchanges since some of the proposed exchanges may be interpreted to be made on a basis other than relative net asset values. In support of this request, Applicants submit that the proposed exchange privileges are fair and equitable to all Fund shareholders and will give them flexibility in their financial planning. Further, Applicants represent there is no financial incentive for Prudential-Bache representatives designed to encourage the proposed exchanges. Applicants also request an exemption from section 22(d) of the Act in order that an otherwise applicable CDSL may be varied, deferred or waived as described above. Applicants represent that they will comply with the provisions of Rule 22d-1 under the Act in connection with the proposed variations, deferrals or waivers of the CDSL resulting from the exchanges.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30865 Filed 12-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22740I; File No. SR-NYSE-85-46]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Amendments to Supplementary Material to Rules 451 and 465 Relating to Reasonable Rates of Reimbursement of Member Organizations in Connection With Proxy and Annual Report Mailings

Pursuant to section 19(b)(1) of the Securities Executive Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes consist of modifications to certain rates of reimbursement as specified in Supplementary Material to Rules 451 and 465 identified as Par. 451.90—"Schedule of approved charges by member organizations in connection with proxy solicitations" and Par. 465.20—"Mailing charges by member organizations". Specifically, the rule changes propose to:

Increase, effective July 1, 1986, the approved reasonable rate of reimbursement for initial mailings of proxy material by $.10 per set (from $.50 to $.60 for those meetings which do not include a proposal which requires beneficial owner instructions and from $.60 to $.70 for those materials which include a proposal requiring beneficial owner instructions);

Increase, effective January 1, 1986, the approved reasonable rate of reimbursement for follow-up mailings of proxy material by $.10 per set (from $.50 to $.60 for a selective mailing or from $.30 to $.40 for a non-selective mailing);

Increase, effective January 1, 1986, the approved reasonable rate of reimbursement for separately mailed copies of annual reports by $.10 per report (from $.10 to $.20); and

Establish, effective January 1, 1986, as a reasonable rate of reimbursement, a minimum charge of $3.00 per issuer for mailing annual reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

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 propsed 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 Changes

(1) *Purpose.* The purpose of the proposed rule changes is to modify certain rates set forth in Rules 451 ad 465 as reasonable rates of reimbursement for the forwarding of

proxy and annual report mailings to beneficial shareowners.

Member organizations who possess or control stock for their customers who are beneficial owners of securities are required by the rules of the Exchange to transmit proxy soliciting material, interim reports, and other material to each beneficial owner whenever the issuer or other person shall furnish the material and give satisfactory assurance that it will reimburse member organizations for all out-of-pocket expenses, including reasonable clerical expenses.

The processing and transmitting of proxy material and the tabulation of votes demand a substantial amount of clerical work by the member organizations. Member organizations must be prepared to treat each proxy solicitation or other transmittal of material as an individual exercise demanding adherence to detailed corporate instructions. In most instances time is of the essence, since there is a limited period during which material received must be mailed to beneficial owners and their votes received, tabulated and sent to the issuers in advance of the stockholders' meeting date. Exchange rules require each member to maintain detailed records of the receipt and mailing of proxy material and to record the receipt of voting instructions from beneficial owners.

The Exchange has, since 1952, published rates of reimbursement it deems reasonable. The satisfactory assurance of payment by an issuer of these rates obligates the member organization to transmit the communications to the beneficial owners for whom it holds securities of the issuer. Member organizations may seek reimbursement at rates less than the approved rates or, with prior notification to and the consent of the person soliciting proxies or the company, may seek reimbursement at rates higher than the approved rates.

(2) *Basis.* The statutory basis for the proposed rule changes is 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, 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; and not be designed to permit unfair discrimination between customers, issures, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed 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 Changes Received From Members, Participants, or Others

The Securities Industry Associaton, through its Operations Committee, has endorsed the changes.

The American Society of Corporate Secretaries, through its Securities Industry Committee, had no objection to the changes.

III. Date of Effectiveness of the Proposed Rules Changes 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 changes 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, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communication relating to the proposed rule changes 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 Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the capition above and should be submitted by January 21, 1986.

For the Commission by Division of Market Regulation, pursuant to delegated authority.

Dated: December 23, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30866 Filed 12-30-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/921]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 21, 1986, at 1:30 p.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international study groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be:

1. Review of the Final Study Group meetings (September–November, 1985);

2. Review of national and international CCIR activities (e.g., Interdepartment Radio Advisory Committee (IRAC) Ad Hoc Group on CCIR Matters, Space World Administrative Radio Conference (WARC) intersessional program, and Mobil WARC preparations;

3. Preparations for the CCIR Plenary Assembly in May, 1986;

4. Other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC.; telephone (202) 632-

2592. All attendees must use the C Street entrance to the building.

Dated: December 19, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-30861 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM 8/923]

State Department—American Private Sector Overseas Security Advisory Council; Meeting

Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), dated October 6, 1972, the Department of State announces an open meeting of the State Department-American Private Sector Overseas Security Advisory Council on January 23, 1986 at 9:30 A.M. in Room 1105, U.S. Department of State. The agenda will include committee reports, a discussion of travel advisories, potential educational programs and a progress report on the activities of the Council.

Members of the public will be welcome up to the seating capacity of the room. The Chairman will entertain comments from the general public as time permtis. Access to the Department of State is controlled. In this regard, please use the "C" Street (diplomatic) entrance to the Department of State. Members of the general public planning to attend the meeting should contact in advance Ms. Alice Johnson, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20520, phone: (202) 653-5220 to arrange for attendance.

Dated: December 23, 1985.

David C. Fields,

Director of the Diplomatic Security Service.

[FR Doc. 85-30860 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/922]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet January 24, 1986 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

The agenda of this meeting is as follows:

1. Report on Rapporteurs meeting;
2. Consideration of Contributions to Study Group VII meeting February 10-21, 1986;
3. Any other business.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, DC., telephone (202) 632-6700. All attendees must use the C Street entrance to the building.

Dated: December 23, 1985.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 85-30862 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-07-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency is modifying a notice found at 49 FR 10768, (March 22, 1984) and modified at 49 FR 34122 (August 28, 1984) regarding immunity from judicial seizure for the painting, "The Flaying of Marsyas" by Titian, on loan to the National Gallery, by changing the dates of the exhibit from September 1, 1984 to February 1, 1985, to January 17, 1986 to April 30, 1986.

EFFECTIVE DATE: The modification is effective December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Office of General Counsel, United States Information Agency, 400 "C" Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is modifying a notice published at 49 FR 10768 (March 22, 1984) and modified at 49 FR 34122 (August 28, 1984). The notice rendered immune from Judicial process the painting: "The Flaying of Marsyas" by Titian, on loan to the National Gallery. The exhibit lent by the National Gallery of Art, Kromeriz, Czechoslovakia was originally scheduled from March 23, 1984 to September 3, 1984 and rescheduled to September 1, 1984 to February 1, 1985. The exhibit is again rescheduled and will take place January 17, 1986 to April 30, 1986. Therefore the final determination published in the **Federal Register** is modified to reflect the change in dates.

Thomas E. Harvey,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 85-30877 Filed 12-30-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center (VAMC), Hampton, VA, Additional Floor NHCU; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a 112-Bed Nursing Home Care Unit at the Veterans Administration Medical Center (VAMC), Hampton, Virginia, and has determined that the potential environmental impacts will be minimal from the development of this project.

The proposed project is a second floor addition to the existing 120-Bed Nursing Home Care Unit (Building No. 146). The facility will provide space for 112 beds and support services in approximately 43,380 gross square feet.

There are no anticipated long-term environmental impacts associated with this subject. Short-term impacts associated with the construction process will affect air quality, noise levels and solid waste disposal.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached

based upon the information in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389-3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: December 17, 1985.

Everett Alvarez, Jr.

Deputy Administrator.

[FR Doc. 85-30858 Filed 12-30-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 251
Tuesday, December 31, 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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Friday, December 20, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in State Bank of Frost, Frost, Minnesota, which was closed by the Deputy Commissioner of Commerce for the State of Minnesota on Friday, December 20, 1985; (2) accept the bid for the transaction submitted by Frost State Bank, Frost, Minnesota, a newly-chartered State nonmember bank; (3) approve the applications of Frost State Bank, Frost, Minnesota, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in State Bank of Frost, Frost, Minnesota; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 4:39 p.m., and at 10:18 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors (1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First City Bank, Glendale, California, which was closed by the Superintendent of Banks for the State of California, on Friday, December 20, 1985; (2) accepted the bid for the transaction submitted by Sterling Bank, Los Angeles, California, an insured State nonmember bank; (3) approved the application of Sterling Bank, Los Angeles, California, for consent to purchase certain assets of an assume the liability to pay deposits made in First City Bank, Glendale, California, and for consent to establish the two offices of First City Bank as branches of Sterling Bank; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Director Irvine, H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practible; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(8), (c)(9)(A)(ii), and (c)(9)(B).

Dated: December 23, 1985.
Federal Deposit Insurance Corporation.
Janet M. Reddish,
Assistant Executive Secretary.
[FR Doc. 85-30970 Filed 12-27-85; 11:18 am]
BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 6, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 27, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-31019 Filed 12-27-85; 3:50 pm]
BILLING CODE 6210-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 30, 1985, January 6, 13, and 20, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 30

Thursday, January 2

3:30 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Week of January 6—Tentative

Monday, January 6

2:00 p.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).

Tuesday, January 7

10:00 a.m.: Briefing by Staff on TVA Corporate Plan (Public Meeting).
2:00 p.m.: Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 &7).

Thursday, January 9

10:00 a.m.: Briefing by TVA on Corporate Plan (Public Meeting).

2:00 p.m.: Briefing by Executive Branch (Closed—Ex. 1).

4:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Friday, January 10

2:00 p.m.: Briefing by Executive Branch (Closed—Ex. 1) (Tentative).

Week of January 13—Tentative

Monday, January 13

10:00 a.m.: Discussion/Possible Vote on Full Power Operating License for Millstone-3 (Public Meeting).

Tuesday, January 14

10:00 a.m.: Briefing by GPU on TMI-2 Cleanup (Public Meeting).

2:00 p.m.: Staff Briefing on Integrated Safety assessment Program (ISAP) (Public Meeting).

Thursday, January 16

2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Friday, January 17

10:00 a.m.: Discussion of Revisions to NRC Sunshine Act Regulations (Public Meeting).

Week of January 20—Tentative

Tuesday, January 21

2:00 p.m.: Briefing on Status of Report of Task Force on Technical Specifications (Public Meeting).

Wednesday, January 22

2:00 p.m.: Discussion of Management/Organization and Internal Personnel Matters (closed—Ex. 2 & 6).

Thursday, January 23

10:00 a.m.: Briefing by INPO (Public Meeting).

2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

To verify the status of meetings call (recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: December 27, 1985.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85-30742 Filed 12-27-85; 3:38 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
December 31, 1985

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Income Taxes; Partner's Distributive Share; Final Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8065]

Income Taxes; Partner's Distributive Share

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations under section 704(b) of the Internal Revenue Code of 1954, relating to the determination of a partner's distributive share of partnership income, gain, loss, deduction, or credit (or item thereof). It reflects certain changes made to the law by the Tax Reform Act of 1976. These final regulations provide taxpayers with the guidance needed to comply with the law.

DATE: The amendments are effective for partnership taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. ATTN: CC:LR:T 202-566-3297.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1983, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 704(b) of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to section 213(d) of the Tax Reform Act of 1976 (95 Stat. 1548). Numerous written comments were submitted during the comment period, and a public hearing was held on May 4, 1983. After consideration of all comments regarding the proposed regulations, these regulations are adopted as revised by this Treasury decision. This Treasury decision reserves § 1.704-1(b)(4)(iv), relating to allocations attributable to nonrecourse debt, with respect to which the March 9, 1983, notice of proposed rulemaking remains outstanding.

Explanation of the Provisions

Section 704(b), as amended by the Tax Reform Act of 1976, provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with such partner's interest in the partnership (determined by taking into account all facts and circumstances) if either the partnership agreement does not provide for the distributive share, or the allocation to the partner under the partnership agreement does not have substantial economic effect.

The final regulations provide rules and examples relating to the substantial economic effect test and to the determination of a partner's interest in the partnership. An allocation that does not meet the substantial economic effect test will not be disturbed if it is consistent with the partners' interests in the partnership. Special rules provide that certain allocations will be deemed to be in accordance with the partners' interests in the partnership.

Substantial Economic Effect

The final regulations provide that the determination of whether an allocation has substantial economic effect involves a two-part test. Under the first part of the test, the allocation must have economic effect. This means that in the event there is an economic benefit or burden that corresponds to an allocation, the partner receiving such allocation will receive such benefit or bear such burden. Generally, an allocation will not have economic effect unless the partners' capital accounts are maintained properly, liquidation proceeds are required to be distributed in accordance with the partners' capital account balances, and, following the distribution of such proceeds, partners are required to restore any deficits in their capital accounts to the partnership.

The final regulations provide rules concerning the sufficiency of a partner's obligation to restore the deficit balance in his capital account to the partnership. With respect to this deficit makeup requirement, the regulations make clear that the obligation to restore need not be unlimited. If certain other requirements are satisfied, an allocation of loss or deduction to a partner that creates or increases a deficit balance in such partner's capital account will be respected so long as such deficit balance does not exceed the dollar amount that such partner is obligated to restore.

The final regulations also provide for an economic effect equivalence test under which allocations have economic effect even though capital accounts are not maintained in accordance with the regulations so long as the same results as would be obtained under a capital account analysis are produced in all possible cases.

Under the second part of the two-part test, the economic effect of the allocation must be substantial. The general rules under this second test require that the allocation have a reasonable possibility of affecting the dollar amounts to be received by the partners, independent of tax consequences. Furthermore, these general rules provide that an allocation is insubstantial if, as a result of the allocation, the after-tax economic consequences of at least one partner may, in present value terms, be enhanced, and there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be diminished. The final regulations provide specifically that allocations are insubstantial if they merely shift tax consequences within a partnership taxable year or are likely to be offset by other allocations in subsequent taxable years.

Capital Accounts

The final regulations provide rules concerning the proper determination and maintenance of the partners' capital accounts. Under these rules a partner's capital account must be increased by the amount of money contributed by such partner to the partnership and allocations to such partner of income (including tax-exempt income) and gain, and must be decreased by the amount of money distributed to such partner by the partnership and allocations to such partner of loss, deduction, and section 705(a)(2)(B) expenditures. In the case of contributed property and property distributed in kind, the regulations adopt a fair market value approach. Thus, a partner's capital account must be increased by the fair market value of the property he contributes to the partnership (rather than its adjusted tax basis) and must be decreased by the fair market value of property distributed to him by the partnership. Consistent with these rules, the final regulations require a preliquidation adjustment to be made to capital accounts to reflect unrealized appreciation or depreciation in the value of distributed property.

The final regulations also permit adjustments to the partners' capital accounts to reflect unrealized appreciation or depreciation in partnership property in connection with the acquisition of an interest from the partnership and the disposition of an interest to the partnership, and in certain other specified circumstances. Additional rules provide for adjustments to the partners' capital accounts to reflect basis adjustments under section 48(q), syndication expenses under section 709, disallowed losses under sections 267(b) and 707(b), transfers of partnership interests, section 754 elections, and depletion, gain, and loss

in respect of partnership oil and gas properties.

The final regulations provide examples relating to the substantial economic effect test. To the extent an allocation fails the substantial economic effect test and is inconsistent with the partners' interests in the partnership, it will be reallocated in accordance with the partners' interests in the partnership.

Partner's Interest in the Partnership

Section 704(b) provides that a partner's interest in the partnership shall be determined by taking into account all the facts and circumstances. The final regulations provide rules and examples for determining a partner's interest in the partnership. Under the final regulations a partner's interest in the partnership is to be determined with reference to the underlying economic arrangement of the partners relating to the particular allocation under consideration. If that economic arrangement cannot be determined, each partner's interest in the partnership is presumed to be equal. The examples contained in the final regulations specify, in certain situations, the partners' interests in the partnership.

Special Rules

The final regulations contain special rules concerning allocations of tax credits, allocations of excess percentage depletion, and allocations of tax items where there has been a revaluation of partnership property. Allocations made in accordance with these special rules are deemed to be in accordance with the partners' interests in the partnership. Finally, the regulations contain rules for determining, in certain instances, the partners' allocable shares of adjusted basis and amount realized under section 613A(c)(7)(D).

Public Comments and Changes in Response to Public Comments—Effective Date

Several public comments questioned the statement in the proposed regulations that the fundamental principles of the rules contained therein relating to substantial economic effect would be applicable to taxable years beginning after December 31, 1975. The effective date rules have been clarified in the final regulations to make clear that the detailed requirements contained in the regulations concerning the maintenance of capital accounts are not mandated for taxable years beginning before May 1, 1986. The final regulations provide that, for taxable years beginning after December 31, 1975, but before May 1, 1986, an allocation that does not have substantial economic effect under the final regulations nevertheless may have substantial economic effect under section 704(b), as interpreted by case law prior regulations, and the legislative history of the Tax Reform Act of 1976. In addition, in order to permit existing partnerships to begin complying with the capital accounting rules contained in the final regulations for future taxable years, the final regulations allow existing partnerships to restate their capital accounts, as of the beginning of their first taxable year for which the final regulations are effective, to reflect the manner in which partnership property would be distributed if the partnership were liquidated at that time.

Allocations Attributable to Nonrecourse Debt

Several comments suggested that the so-called minimum gain rule contained in the proposed regulations was too restrictive. These comments contended that allocations attributable to nonrecourse debt should be permitted (without reference to minimum gain) to the extent the value of the property securing such debt exceeds the balance of the debt. Other comments urged that the nonrecourse rule was too lenient, and that, under the statute, deductions attributable to nonrecourse debt must follow the partners' interests in the partnership. These comments asserted that the minimum gain rule was inconsistent with such interests and proposed alternative measurements which the commentators felt would be more indicative of the partners' interests in the partnership. In addition, some comments pointed out certain technical deficiencies in the proposed regulations. The Treasury Department and the Internal Revenue Service are still considering the issues raised by these comments and, accordingly, have decided to defer any action on the portion of the proposed regulations concerning allocations attributable to nonrecourse debt.

Application of Profit Motive Test at the Partner Level

Several comments criticized the inference in the proposed regulations that the profit motive test of section 183 would be applied at the partner level for purposes of determining the deductibility of a partner's share of partnership losses or expenses. Since the Treasury Department and the Internal Revenue Service agree that it is inappropriate to decide in these regulations whether section 183 applies at the partner level, the reference to section 183 is deleted and replaced with the case law requirement that the partner receiving an allocation have a bona-fide motive for economic gain, independent of tax consequences.

Interaction Between Section 704(b) and Section 704(c)

Several comments concerned the relationship between the proposed rules relating to allocations under section 704(b) and the rules under section 704(c) relating to the determination of the partners' distributive shares of certain tax items with respect to contributed property. Specifically, some comments criticized the general rule in the proposed regulations that contributed property be reflected in capital accounts at its adjusted tax basis, even though an optional rule permitted such property to be reflected in capital accounts at fair market value if certain conditions were satisfied.

The final regulations clarify the relationship between section 704(c) and section 704(b) allocations. In view of the comments received and recent amendments to section 704(c), the suggestion that contributed property be required to be reflected in the contributing partner's capital account at fair market value (rather than adjusted tax basis) has been adopted in the final regulations.

The final regulations make clear that, if section 704(c) determines the partners' distributive shares of depreciation, depletion, and gain or loss with respect to the contributed property, such determination is not subject to the substantial economic effect test of section 704(b). However, the final regulations also make clear that in these cases the partners' distributive shares of the corresponding book items are determined under section 704(b) and the final regulations, and that it is with reference to that determination that section 704(c) determines the partners' distributive shares of the tax items.

Some comments questioned the reference to section 704(c) principles for purposes of determining the partners' shares of depreciation, depletion, and gain or loss, as computed for tax purposes, when capital accounts are adjusted to reflect unrealized appreciation or depreciation in partnership property. The final regulations clarify this reference and provide additional rules for certain cases not expressly addressed under the existing section 704(c) regulations. It is expected that similar rules will be included when new regulations under section 704(c) are proposed and that additional guidance will be contained in those regulations.

Two-Part Substantial Economic Effect Test

Several comments challenged the elevation of "substantiality" to a separate test within the substantial economic effect determination >ome comments asserted that absolute economic effect was not necessary to meet the statutory test. These comments were given careful consideration. Nevertheless, the Treasury Department and the Internal Revenue Service maintain that an allocation must have economic effect and that such economic effect must be substantial.

Several comments asserted that the substantiality test was vague and subjective, resulting in undue uncertainty. Although the concept of substantiality by its nature is not easily susceptible to mechanical tests, the final regulations provide clarification and additional guidance on the issue of substantiality. In particular, the final regulations make clear that the timing of the economic consequences that correspond to an allocation are taken into account in determining whether the economic effect of such allocation is substantial. The Treasury Department and the Internal Revenue Service are considering whether further guidance is warranted concerning the relationship of the substantial economic effect test to time value of money principles. *See.* H. R. Rep. No. 99–426 99th Cong., 1st Sess. 259 (1985). To assist in this consideration, comments from interested parties are invited.

Deficit Make-Up Requirement

Several comments questioned the necessity for the deficit make-up requirement in the economic effect test. Many of these comments concerned the applicability of this requirement to limited partners. The Treasury Department and the Internal Revenue Service gave careful consideration to these comments, but concluded that a deficit make-up obligation properly is required by the economic effect test. However, the rule has been clarified in certain respects. For instance, the final regulations clarify under what circumstances an allocation to a partner who is not obligated to restore the deficit balance in his capital account (or who is obligated to restore only a limited dollar amount of such deficit) will have economic effect. In general, an allocation will have economic effect in such circumstances, provided the allocation does not cause the recipient partner's capital account (as determined taking into account certain adjustments) to become less than zero (or to become negative by more than the amount of his limited deficit make-up obligation), and provided certain other requirements are satisfied.

Capital Account Maintenance Rules

Several comments questioned the use of tax accounting principles for maintaining capital accounts. Generally, the final regulations adopt the rule contained in the proposed regulations that requires the partners' capital accounts to reflect tax accounting principles. Nevertheless, the final regulations deviate from this general requirement in two principal respects. First, as described above, the final regulations adopt the suggestion of several commentators that all contributions and distributions of property be reflected in capital accounts at their fair market value when contributed or distributed (rather than at their adjusted tax basis), and that subsequent capital account adjustments in respect of such property reflect this fair market value.

Second, comments suggested that partnerships should have an unlimited right to adjust capital accounts to reflect unrealized appreciation and depreciation in the value of partnership assets. These comments suggested that the rule in the proposed regulations that permits such adjustments to capital accounts only upon the occurrence of certain specified events is too narrow. On the other hand, several members of the accounting profession expressed concern about the reference in the proposed regulations to sound financial accounting principles, since they believe such principles would rarely, if ever, allow capital accounts to be booked to fair market value. Accordingly, the final regulations eliminate this reference and modify the class of cases in which capital accounts may be adjusted to reflect the fair market value of partnership property and still comply with the capital account maintenance rules.

In addition, a number of technical suggestions and modifications relating to the maintenance of capital accounts have been adopted in the final regulations, including provisions to take into account the effect of liabilities and the provisions of sections 48(q), 267, 707(b), 709, and 754.

Simulated Depletion Allowance

A number of comments suggested that the rule requiring adjustments to capital account balances to reflect a simulated partnership depletion allowance be changed to allow partnerships to choose to adjust capital accounts by the actual depletion deductions taken by the partners. This suggestion has been adopted. A modified form of simulated depletion is retained as an option for those partnerships that elect it.

Economic Effect Equivalence

Several comments questioned the strictness of the capital account equivalence test. Some comments asked for a more liberal test, whereas others suggested certain technical and clarifying changes. Given that the taxpayer has the benefit of certain special rules deeming certain allocations to be consistent with the partners' interests in the partnership and the opportunity to demonstrate by the facts and circumstances that an allocation is in accordance with a partner's interest in the partnership, the test in the proposed regulations (which, for the sake of precision, has been relabeled the economic effect equivalence test) has not been liberalized, but its application has been clarified.

Partners' Interests in the Partnership

A number of comments asked for more guidance concerning how to determine a partner's interest in the partnership in various factual settings. Specific comments questioned the effect that a reallocation of an item would have on prior or subsequent allocations. The final regulations provide additional guidance in certain cases.

Example (19)(iii)

In the proposed regulations, public comment was specifically requested on how to apply that partner's interests in the partnership test to the facts in example (19)(iii) of the proposed regulations. After studying the public comments, the Treasury Department and the Internal Revenue Service have determined that under the standard in § 1.704–1(b)(3) both partners in example (19)(iii) of the proposed regulations are equal partners. The final regulations have incorporated this additional guidance into example (19)(iii).

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the final regulations contained herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 53 do not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects in 26 CFR 1.701-1—1.771-1

Income taxes, Partnerships.

Adoption of Amendments to the Regulations

Accordingly, effective for partnership taxable years beginning after April 30, 1986, 26 CFR Part 1 is amended as follows:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.704-1 is amended by revising paragraph (b) to read as follows:

§ 1.704-1 Partner's distributive share.

* * * * *

(b) *Determination of partner's distributive share*—(0) *Cross-references.*

Heading	Section
Cross-references	1.704-1(b)(0)
In general	1.704-1(b)(1)
Basic principles	1.704-1(b)(1)(i)
Effective dates	1.704-1(b)(1)(ii)
Effect of other sections	1.704-1(b)(1)(iii)
Other possible tax consequences	1.704-1(b)(1)(iv)
Purported allocations	1.704-1(b)(1)(v)
Section 704(c) determinations.	1.704-1(b)(1)(vi)
Bottom line allocations	1.704-1(b)(1)(vii)
Substantial economic effect	1.704-1(b)(2)
Two-part analysis	1.704-1(b)(2)(i)
Economic effect	1.704-1(b)(2)(ii)
Fundamental principles.	1.704-1(b)(2)(ii)(*a*)
Three requirements	1.704-1(b)(2)(ii)(*b*)
Obligation to restore deficit.	1.704-1(b)(2)(ii)(*c*)
Alternate test for economic effect.	1.704-1(b)(2)(ii)(*d*)
Partial economic effect.	1.704-1(b)(2)(ii)(*e*)
Reduction of obligation to restore.	1.704-1(b)(2)(ii)(*f*)
Liquidation defined	1.704-1(b)(2)(ii)(*g*)
Partnership agreement defined.	1.704-1(b)(2)(ii)(*h*)
Economic effect equivalence.	1.704-1(b)(2)(ii)(*i*)
Substantiality	1.704-1(b)(2)(iii)
General rules	1.704-1(b)(2)(iii)(*a*)
Shifting tax consequences.	1.704-1(b)(2)(iii)(*b*)
Transitory allocations.	1.704-1(b)(2)(iii)(*c*)
Maintenance of capital accounts.	1.704-1(b)(2)(iv)
In general	1.704-1(b)(2)(iv)(*a*)
Basic rules	1.704-1(b)(2)(iv)(*b*)
Treatment of liabilities	1.704-1(b)(2)(iv)(*c*)
Contributed property	1.704-1(b)(2)(iv)(*d*)
In general	1.704-1(b)(2)(iv)(*d*)(*1*)
Contribution of promissory notes.	1.704-1(b)(2)(iv)(*d*)(*2*)
Section 704(c) considerations.	1.704-1(b)(2)(iv)(*d*)(*3*)
Distributed property	1.704-1(b)(2)(iv)(*e*)
In general	1.704-1(2)(iv)(*e*)(*1*)
Distribution of promissory notes.	1.704-1(b)(2)(*e*)(*2*)
Revaluations of property	1.704-1(b)(2)(iv)(*f*)
Adjustments to reflect book value.	1.704-1(b)(2)(iv)(*g*)
In general	1.704-1(b)(2)(iv)(*g*)(*1*)
Payables and receivables.	1.704-1(b)(2)(iv)(*g*)(*2*)
Determining amount of book items.	1.704-1(b)(2)(iv)(*g*)(*3*)
Determinations of fair market value.	1.704-1(b)(2)(iv)(*h*)
Section 705(a)(2)(B) expenditures.	1.704-1(b)(2)(iv)(*i*)
In general	1.704-1(b)(2)(iv)(*i*)(*1*)
Expenses described in section 709.	1.704-1(b)(2)(iv)(*i*)(*2*)
Disallowed losses	1.704-1(b)(2)(iv)(*i*)(*3*)
Basis adjustments to section 38 property.	1.704-1(b)(2)(iv)(*j*)
Depletion of oil and gas properties.	1.704-1(b)(2)(iv)(*k*)
In general	1.704-1(b)(2)(iv)(*k*)(*1*)
Simulated depletion	1.704-1(b)(2)(iv)(*k*)(*2*)
Actual depletion	1.704-1(b)(2)(iv)(*k*)(*3*)
Effect of book values.	1.704-1(b)(2)(iv)(*k*)(*4*)
Transfers of partnership interests.	1.704-1(b)(2)(iv)(*l*)
Section 754 elections	1.704-1(b)(2)(iv)(*m*)
In general	1.704-1(b)(2)(iv)(*m*)(*1*)
Section 743 adjustments.	1.704-1(b)(2)(iv)(*m*)(*2*)
Section 732 adjustments.	1.704-1(b)(2)(iv)(*m*)(*3*)
Section 734 adjustments.	1.704-1(b)(2)(iv)(*m*)(*4*)
Limitations on adjustments.	1.704-1(b)(2)(iv)(*m*)(*5*)
Partnership level characterization.	1.704-1(b)(2)(iv)(*n*)
Guaranteed payments	1.704-1(b)(2)(iv)(*o*)
Minor discrepancies	1.704-1(b)(2)(iv)(*p*)
Adjustments where guidance is lacking.	1.704-1(b)(2)(iv)(*q*)
Restatement of capital accounts.	1.704-1(b)(2)(iv)(*r*)
Partner's interest in the partnership.	1.704-1(b)(3)
In general	1.704-1(b)(3)(i)
Factors considered	1.704-1(b)(3)(ii)
Certain determinations.	1.704-1(b)(3)(iii)
Special rules	1.704-1(b)(4)
Allocations to reflect revaluations.	1.704-1(b)(4)(i)
Credits	1.704-1(b)(4)(ii)
Excess percentage depletion.	1.704-1(b)(4)(iii)
Nonrecourse debt	1.704-1(b)(4) iv)
Allocations under section 613A(c)(7)(D).	1.704-1(b)(4)(v)
Amendments to partnership agreement.	1.704-1(b)(4)(vi)
Recapture	1.704-1(b)(4)(vii)
Examples	1.704-1(b)(5)

(1) *In general*—(i) *Basic principles.* Under section 704(b) if a partnership agreement does not provide for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner, or if the partnership agreement provides for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner but such allocation does not have substantial economic effect, then the partner's distributive share of such income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with such partner's interest in the partnership (taking into account all facts and circumstances). If the partnership agreement provides for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner, there are ways in which such allocation will be respected under section 704(b) and this paragraph. First, the allocation can have substantial economic effect in accordance with paragraph (b)(2) of this section. Second, taking into account all facts and circumstances, the allocation can be in accordance with the partner's interest in the partnership. See paragraph (b)(3) of this section. Third, the allocation can be deemed to be in accordance with the partner's interest in the partnership pursuant to one of the special rules contained in paragraph (b)(4) of this section. To the extent an allocation under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) to a partner does not have substantial economic effect, is not in accordance with the partner's interest in the partnership, and is not deemed to be in accordance with the partner's interest in the partnership, such income, gain, loss, deduction, or credit (or item thereof) will be reallocated in accordance with the partner's interest in the partnership (determined under paragraph (b)(3) of this section).

(ii) *Effective dates.* The provisions of this paragraph are effective for partnership taxable years beginning after December 31, 1975. However, for partnership taxable years beginning after December 31, 1975, but before May 1, 1986, an allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner that is not respected under this paragraph nevertheless will be respected under section 704(b) if such allocation has substantial economic effect as that term has been interpreted under the relevant case law, the legislative history of section 210(d) of the Tax Reform Act of 1976, and the provisions of this paragraph in effect for partnership taxable years beginning before May 1, 1986.

(iii) *Effect of other sections.* The determination of a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) under section 704(b) and this paragraph is not conclusive as to the tax treatment of a partner with respect to such distributive share. For example, an allocation of loss or deduction to a partner that is respected under section 704(b) and this paragraph may not be deductible by such partner if the partner lacks the

requisite motive for economic gain (see, *e.g., Goldstein v. Commissioner*, 364 F.2d 734 (2d Cir. 1966)), or may be disallowed for that taxable year (and held in suspense) if the limitations of section 465 or section 704(d) are applicable. Similarly, an allocation that is respected under section 704(b) and this paragraph nevertheless may be reallocated under other provisions, such as section 482, section 704(e)(2), section 706(d) (and related assignment of income principles), and paragraph (b)(2)(ii) of § 1.751-1. If a partnership has a section 754 election in effect, a partner's distributive share of partnership income, gain, loss, or deduction may be affected as provided in § 1.743-1 (see paragraph (b)(2)(iv)(*m*)(*2*) of this section). The examples in paragraph (b)(5) of this section concern the validity of allocations under section 704(b) and this paragraph and, except as noted, do not address the effect of other sections or limitations on such allocations.

(iv) *Other possible tax consequences.* Allocations that are respected under section 704(b) and this paragraph may give rise to other tax consequences, such as those resulting from the application of section 61, section 83, section 751, section 2501, paragraph (f) of § 1.46-3, § 1.47-6, paragraph (b)(1) of § 1.721-1 (and related principles), and paragraph (e) of § 1.752-1. The examples in paragraph (b)(5) of this section concern the validity of allocations under section 704(b) and this paragraph and, except as noted, do not address other tax consequences that may result from such allocations.

(v) *Purported allocations.* Section 704(b) and this paragraph do not apply to a purported allocation if it is made to a person who is not a partner of the partnership (see section 7701(a)(2) and paragraph (d) of § 301.7701-3) or to a person who is not receiving the purported allocation in his capacity as a partner (see section 707(a) and paragraph (a) of § 1.707-1).

(vi) *Section 704(c) determinations.* Under section 704(c) if property is contributed by a partner to a partnership, the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to such property are determined so as to take account of the variation between the adjusted tax basis and fair market value of such property. Although section 704(b) does not directly determine the partners' distributive shares of tax items governed by section 704(c), the partners' distributive shares of tax items are determined under section 704(c) with reference to the partners' distributive shares of the corresponding book items, as determined under section 704(b) and this paragraph. (See paragraphs (b)(2)(iv)(*d*) and (b)(4)(i) of this section.) Section 704(c), as cited in this paragraph, refers to such section as in effect for property contributed to a partnership after March 31, 1984. See example (13)(i) of paragraph (b)(5) of this section.

(vii) *Bottom line allocations.* Section 704(b) and this paragraph are applicable to allocations of income, gain, loss, deduction, and credit, allocations of specific items of income, gain, loss, deduction, and credit, and allocations of partnership net or "bottom line" taxable income and loss. An allocation to a partner of a share of partnership net or "bottom line" taxable income or loss shall be treated as an allocation to such partner of the same share of each item of income, gain, loss, and deduction that is taken into account in computing such net or "bottom line" taxable income or loss. See example (15)(i) of paragraph (b)(5) of this section.

(2) *Substantial economic effect*—(i) *Two-part analysis.* The determination of whether an allocation of income, gain, loss, or deduction (or item thereof) to a partner has substantial economic effect involves a two-part analysis that is made as of the end of the partnership taxable year to which the allocation relates. First, the allocation must have economic effect (within the meaning of paragraph (b)(2)(ii) of this section). Second, the economic effect of the allocation must be substantial (within the meaning of paragraph (b)(2)(iii) of this section).

(ii) *Economic effect*—(*a*) *Fundamental principles.* In order for an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden.

(*b*) *Three requirements.* Based on the principles contained in paragraph (b)(2)(ii)(*a*) of this section, and except as otherwise provided in this paragraph, an allocation of income, gain, loss, or deduction (or item thereof) to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides—

(*1*) For the determination and maintenance of the partners' capital accounts in accordance with the rules of paragraph (b)(2)(iv) of this section,

(*2*) Upon liquidation of the partnership any partner's interest in the partnership), liquidating distributions are required in all cases to be made in accordance with the positive capital account balances of the partners, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs (other than those made pursuant to this requirement (*2*) and requirement (*3*) of this paragraph (b)(2)(ii)(*b*)), by the end of such taxable year (or, if later, within 90 days after the date of such liquidation), and

(*3*) If such partner has a deficit balance in his capital account following the liquidation of his interest in the partnership, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs (other than those made pursuant to this requirement (*3*)), he is unconditionally obligated to restore the amount of such deficit balance to the partnership by the end of such taxable year (or, if later, within 90 days after the date of such liquidation), which amount shall, upon liquidation of the partnership, be paid to creditors of the partnership or distributed to other partners in accordance with their positive capital account balances (in accordance with requirement (*2*) of this paragraph (b)(2)(*ii*)(*b*)).

For purposes of the preceding sentence, a partnership taxable year shall be determined without regard to section 706(c)(2)(A). See examples (1)(i) and (ii), (4)(i), (8)(i), and (16)(i) of paragraph (b)(5) of this section.

(*c*) *Obligation to restore deficit.* If a partner is not expressly obligated to restore the deficit balance in his capital account, such partner nevertheless will be treated as obligated to restore the deficit balance in his capital account (in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section) to the extent of—

(*1*) The outstanding principal balance of any promissory note (of which such partner is the maker) contributed to the partnership by such partner (other than a promissory note that is readily tradable on an established securities market), and

(*2*) The amount of any unconditional obligation of such partner (whether imposed by the partnership agreement or by State or local law) to make subsequent contributions to the partnership (other than pursuant to a promissory note of which such partner is the maker),

provided that such note or obligation is required to be satisfied at a time no later

than the end of the partnership taxable year in which such partner's interest is liquidated (or, if later, within 90 days after the date of such liquidation). If a promissory note referred to in the previous sentence is negotiable, a partner will be considered required to satisfy such note within the time period specified in such sentence if the partnership agreement provides that, in lieu of actual satisfication, the partnership will retain such note and such partner will contribute to the partnership the excess, if any, of the outstanding principal balance of such note over its fair market value at the time of liquidation. See paragraph (b)(2)(iv)(*d*)(*2*) of this section. See examples (1)(ix) and (x) of paragraph (b)(5) of this section. A partner in no event will be considered obligated to restore the deficit balance in his capital account to the partnership (in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section) to the extent such partner's obligation is not legally enforceable, or the facts and circumstances otherwise indicate a plan to avoid or circumvent such obligation. See paragraphs (b)(2)(ii)(*f*), (b)(2)(ii)(*h*), and (b)(4)(vi) of this section for other rules regarding such obligation.

(*d*) *Alternate test for economic effect.* If—

(*1*) Requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied, and

(*2*) The partner to whom an allocation is made is not obligated to restore the deficit balance in his capital account to the partnership (in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section), or is obligated to restore only a limited dollar amount of such deficit balance, and

(*3*) The partnership agreement contains a "qualified income offset," such allocation will be considered to have economic effect under this paragraph (b)(2)(ii)(*d*) to the extent such allocation does not cause or increase a deficit balance in such partner's capital account (in excess of any limited dollar amount of such deficit balance that such partner is obligated to restore) as of the end of the partnership taxable year to which such allocation relates. In determining the extent to which the previous sentence is satisfied, such partner's capital account also shall be reduced for—

(*4*) Adjustments that, as of the end of such year, reasonably are expected to be made to such partner's capital account under paragraph (b)(2)(iv)(*k*) of this section for depletion allowances with respect to oil and gas properties of the partnership, and

(*5*) Allocations of loss and deduction that, as of the end of such year, reasonably are expected to be made to such partner pursuant to section 704(e)(2), section 706(d), and paragraph (b)(2)(ii) of § 751-1, and

(*6*) Distributions that, as of the end of such year, reasonably are expected to be made to such partner to the exent they exceed offsetting increases to such partner's capital account that reasonably are expected to occur during (or prior to) the partnership taxable years in which such distributions reasonably are expected to be made.

For purposes of determining the amount of expected distributions and expected capital account increases described in (*6*) above, the rule set out in paragraph (b)(2)(iii)(*c*) of this section concerning the presumed value of partnership property shall apply. The partnership agreement contains a "qualified income offset" if, and only if, it provides that a partner who unexpectedly receives an adjustment, allocation, or distribution described in (*4*), (*5*), or (*6*) above, will be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible. See examples (1)(iii), (iv), (v), (vi), (viii), (ix), and (x), (15), and (16)(ii) of paragraph (b)(5) of this section.

(*e*) *Partial economic effect.* If only a portion of an allocation made to a partner with respect to a partnership taxable year has economic effect, both the portion that has economic effect and the portion that is reallocated shall consist of a proportionate share of all items that made up the allocation to such partner for such year. See examples (15) (ii) and (iii) of paragraph (b)(5) of this section.

(*f*) *Reduction of obligation to restore.* If requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied, a partner's obligation to restore the deficit balance in his capital account (or any limited dollar amount thereof) to the partnership may be eliminated or reduced as of the end of a partnership taxable year without affecting the validity of prior allocations (see paragraph (b)(4)(vi) of this section) to the extent the deficit balance (if any) in such partner's capital account, after reduction for the items described in (*4*), and (*5*), and (*6*) of paragraph (b)(2)(iv)(*d*) of this section, will not exceed the partner's remaining obligation (if any) to restore the deficit balance in his capital account. See example (1)(viii) of paragraph (b)(5) of this section.

(*g*) *Liquidation defined.* For purposes of this paragraph, a liquidation of a partner's interest in the partnership occurs upon the earlier of (*1*) the date upon which there is a liquidation of the partnership, or (*2*) the date upon which there is a liquidation of the partner's interest in the partnership under paragraph (d) of § 1.761-1. For purposes of this paragraph, the liquidation of a partnership occurs upon the earlier of (*3*) the date upon which the partnership is terminated under section 708(b)(1), or (*4*) the date upon which the partnership ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its partners). Requirements (*2*) and (*3*) of paragraph (b)(2)(ii)(*b*) of this section will be considered unsatisfied if the liquidation of a partner's interest in the partnership is delayed after its primary business activities have been terminated (for example, by continuing to engage in a relatively minor amount of business activity, if such actions themselves do not cause the partnership to terminate pursuant to section 708(b)(1)) for a principal purpose of deferring any distribution pursuant to requirement (*2*) of paragraph (b)(2)(ii)(*b*) of this section or deferring any partner's obligations under requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section.

(*h*) *Partnership agreement defined.* For purposes of this paragraph, the partnership agreement includes all agreements among the partners, or between one or more partners and the partnership, concerning affairs of the partnership and responsibilities of partners, whether oral or written, and whether or not embodied in a document referred to by the partners as the partnership agreement. Thus, in determining whether distributions are required in all cases to be made in accordance with the partners' positive capital account balances (requirement (*2*) of paragraph (b)(2)(ii)(*b*) of this section), and in determining the extent to which a partner is obligated to restore a deficit balance in his capital account (requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section), all arrangements among partners, or between one or more partners and the partnership relating to the partnership, direct and indirect, including puts, options, and other buy-sell agreements, and any other "stop-loss" arrangement, are considered to be part of the partnership agreement. In addition, the partnership agreement includes provisions of Federal, State, or local law that govern the affairs of the partnership or are considered under such law to be a part of the partnership agreement (see the last sentence of paragraph (c) of

§ 1.761–1). For purposes of this paragraph (b)(2)(ii)(*h*), an agreement with a partner or a partnership shall include an agreement with a person related, within the meaning of section 267(b) (without modification by section 267(e)(1)) or section 707(b)(1), to such partner.

(*i*) *Economic effect equivalence.* Allocations made to a partner that do not otherwise have economic effect under this paragraph (b)(2)(ii) shall nevertheless have economic effect, provided that the partnership agreement ensures that a liquidation of the partnership as of the end of each partnership taxable year will produce the same economic results to the partners as would occur if requirements (*1*), (*2*), and (*3*) of paragraph (b)(2)(ii)(*b*) of this section had been satisfied. See examples (4)(ii) and (iii) of paragraph (b)(5) of this section.

(iii) *Substantiality*— (*a*) *General rules.* Except as otherwise provided in this paragraph (b)(2)(iii), the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. Notwithstanding the preceding sentence, the economic effect of an allocation (or allocations) is not substantial if, at the time the allocation becomes part of the partnership agreement, (*1*) the after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (*2*) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement. In determining the after-tax economic benefit or detriment to a partner, tax consequences that result from the interaction of the allocation with such partner's tax attributes that are unrelated to the partnership will be taken into account. See examples (5) and (9) of paragraph (b)(5) of this section. The economic effect of an allocation is not substantial in the two situtations described in paragraphs (b)(2)(iii) (*b*) and (*c*) of this section. However, even if an allocation is not described therein, its economic effect may be insubstantial under the general rules stated in this paragraph (b)(2)(iii)(*a*). References in this paragraph (b)(2)(iii) to allocations includes capital account adjustments made pursuant to paragraph (b)(2)(iv)(*k*) of this section.

(*b*) *Shifting tax consequences.* The economic effect of an allocation (or allocations) in a partnership taxable year is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement, there is a strong likelihood that—

(*1*) The net increases and decreases that will be recorded in the partners' respective capital accounts for such taxable year will not differ substantially from the net increases and decreases that would be recorded in such partners' respective capital accounts for such year if the allocations were not contained in the partnership agreement, and

(*2*) The total tax liability of the partners (for their respective taxable years in which the allocations will be taken into account) will be less than if the allocations were not contained in the partnership agreement (taking into account tax consequences that result from the interaction of the allocation (or allocations) with partner tax attributes that are unrelated to the partnership).

If, at the end of a partnership taxable year to which an allocation (or allocations) relates, the net increases and decreases that are recorded in the partners' respective capital accounts do not differ substantially from the net increases and decreases that would have been recorded in such partners' respective capital accounts had the allocation (or allocations) not been contained in the partnership agreement, and the total tax liability of the partners is (as described in (*2*) above) less than it would have been had the allocation (or allocations) not been contained in the partnership agreement, it will be presumed that, at the time the allocation (or allocations) became part of such partnership agreement, there was a strong likelihood that these results would occur. This presumption may be overcome by a showing of facts and circumstances that prove otherwise. See examples (6), (7)(ii) and (iii), and (10)(ii) of paragraph (b)(5) of this section.

(*c*) *Transitory allocations.* If a partnership agreement provides for the possibility that one or more allocations (the "original allocation(s)") will be largely offset by one or more other allocations (the "offsetting allocation(s)"), and, at the time the allocations become part of the partnership agreement, there is a strong likelihood that—

(*1*) The net increases and decreases that will be recorded in the partners' respective capital accounts for the taxable years to which the allocations relate will not differ substantially from the net increases and decreases that would be recorded in such partners' respective capital accounts for such years if the original allocation(s) and offsetting allocation(s) were not contained in the partnership agreement, and

(*2*) The total tax liability of the partners (for their respective taxable years in which the allocations will be taken into account) will be less than if the allocations were not contained in the partnership agreement (taking into account tax consequences that result from the interaction of the allocation (or allocations) with partner tax attributes that are unrelated to the partnership)

the economic effect of the original allocation(s) and offsetting allocation(s) will not be substantial. If, at the end of a partnership taxable year to which an offsetting allocation(s) relates, the net increases and decreases recorded in the partners' respective capital accounts do not differ substantially from the net increases and decreases that would have been recorded in such partners' respective capital accounts had the original allocation(s) and the offsetting allocation(s) not been contained in the partnership agreement, and the total tax liability of the partners is (as described in (*2*) above) less than it would have been had such allocations not been contained in the partnership agreement, it will be presumed that, at the time the allocations became part of the partnership agreement, there was a strong likelihood that these results would occur. This presumption may be overcome by a showing of facts and circumstances that prove otherwise. See examples (1)(xi), (2), (3), (7) (i) and (iv), (8)(ii), and (17) of paragraph (b)(5) of this section. Notwithstanding the foregoing, the original allocation(s) and the offsetting allocation(s) will not be insubstantial (under this paragraph (b)(2)(iii)(*c*)) if, at the time the allocations become part of the partnership agreement, there is a strong likelihood that the offsetting allocation(s) will not, in large part, be made within five years after the original allocation(s) is made (determined on a first-in, first-out basis). See example (2) of paragraph (b)(5) of this section. For purposes of applying the provisions of this paragraph (b)(2)(iii) (and paragraphs (b)(2)(ii)(*d*)(*6*) and (b)(3)(iii) of this section), the adjusted tax basis of partnership property (or, if partnership property is properly reflected on the books of the partnership at a book value that differs from its adjusted tax basis,

the book value of such property) will be presumed to be the fair market value of such property, and adjustments to the adjusted tax basis (or book value) of such property will be presumed to be matched by corresponding changes in such property's fair market value. Thus, there cannot be a strong likelihood that the economic effect of an allocation (or allocations) will be largely offset by an allocation (or allocations) of gain or loss from the disposition of partnership property. See examples (1) (vi) and (xi) of paragraph (b)(5) of this section.

(iv) *Maintenance of capital accounts—(a) In general.* The economic effect test described in paragraph (b)(2)(ii) of this section requires an examination of the capital accounts of the partners of a partnership, as maintained under the partnership agreement. Except as otherwise provided in paragraph (b)(2)(ii)(*i*) of this section, an allocation of income, gain, loss, or deduction will not have economic effect under paragraph (b)(2)(ii) of this section, and will not be deemed to be in accordance with a partner's interest in the partnership under paragraph (b)(4) of this section, unless the capital accounts of the partners are determined and maintained throughout the full term of the partnership in accordance with the capital accounting rules of this paragraph (b)(2)(iv).

(*b*) *Basic rules.* Except as otherwise provided in this paragraph (b)(2)(iv), the partners' capital accounts will be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) if, and only if, each partner's capital account is increased by (*1*) the amount of money contributed by him to the partnership, (*2*) the fair market value of property contributed by him to the partnership (net of liabilities securing such contributed property that the partnership is considered to assume or take subject to under section 752), and (*3*) allocations to him of partnership income and gain (or items thereof), including income and gain exempt from tax and income and gain described in paragraph (b)(2)(iv)(*g*) of this section, but excluding income and gain described in paragraph (b)(4)(i) of this section; and is decreased by (*4*) the amount of money distributed to him by the partnership, (*5*) the fair market value of property distributed to him by the partnership (net of liabilities securing such distributed property that such partner is considered to assume or take subject to under section 752), (*6*) allocations to him of expenditures of the partnership described in section 705 (a)(2)(B), and (*7*) allocations of partnership loss and deduction (or item thereof), including loss and deduction described in paragraph (b)(2)(iv)(*g*) of this section, but excluding items described in (*6*) above and loss or deduction described in paragraphs (b)(4)(i) or (b)(4)(iii) of this section; and is otherwise adjusted in accordance with the additional rules set forth in this paragraph (b)(2)(iv). For purposes of this paragraph, a partner who has more than one interest in a partnership shall have a single capital account that reflects all such interests, regardless of the class of interests owned by such partner (*e.g.*, general or limited) and regardless of the time or manner in which such interests were acquired.

(*c*) *Treatment of liabilities.* For purposes of this paragraph (b)(2)(iv), (*1*) money contributed by a partner to a partnership includes the amount of any partnership liabilities that are assumed by such partner (other than liabilities described in paragraph (b)(2)(iv)(*b*)(*5*) of this section that are assumed by a distributee partner) but does not include increases in such partner's share of partnership liabilities (see section 752(a)), and (*2*) money distributed to a partner by a partnership includes the amount of such partner's individual liabilities that are assumed by the partnership (other than liabilities described in paragraph (b)(2)(iv)(*b*)(*2*) of this section that are assumed by the partnership) but does not include descreases in such partner's share of partnership liabilities (see section 752(b)). For purposes of this paragraph (b)(2)(iv)(*c*), liabilities may be considered to be assumed only to the extent the assuming party is thereby subjected to primary and personal liability with respect to such obligation, and the obligee is aware of the assumption and can directly enforce the assuming party's obligation.

(*d*) *Contributed property—(1) In general.* The basic capital accounting rules contained in paragraph (b)(2)(iv)(*b*) of this section require that a partner's capital account be increased by the fair market value of property contributed to the partnership by such partner on the date of contribution. See examples (13) (i) and (v) of paragraph (b)(5) of this section. Consistent with section 752(c), section 7701(g) does not apply in determining such fair market value.

(*2*) *Contribution of promissory notes.* Notwithstanding the general rule of paragraph (b)(2)(iv)(*b*)(*2*) of this section, except as provided in this paragraph (b)(2)(iv)(*d*)(*2*), if a promissory note is contributed to a partnership by a partner who is the maker of such note, such partner's capital account will be increased with respect to such note only when there is a taxable disposition of such note by the partnership or when the partner makes principal payments on such note. See example (1)(ix) of paragraph (b)(5) of this section. The first sentence of this paragraph (b)(2)(iv)(*d*)(*2*) shall not apply if the note referred to therein is readily tradable on an established securities market. See also paragraph (b)(2)(ii)(*c*) of this section. Furthermore, a partner whose interest is liquidated will be considered as satisfying his obligation to restore the deficit balance in his capital account to the extent of (*i*) the fair market value, at the time of contribution, of any negotiable promissory note (of which such partner is the maker) that such partner contributes to the partnership on or after the date his interest is liquidated and within the time specified in paragraph (b)(2)(ii)(*b*)(*3*) of this section, and (*ii*) the fair market value, at the time of liquidation, of the unsatisfied portion of any negotiable promissory note (of which such partner is the maker) that such partner previously contributed to the partnership. For purposes of the preceding sentence, the fair market value of a note will be no less than the outstanding principal balance of such note, provided that such note bears interest at a rate no less than the applicable federal rate at the time of valuation.

(3) *Section 704(c) considerations.* Section 704(c) governs the determination of the partner's distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to property contributed to a partnership (see paragraph (b)(1)(iv) of this section). In cases where section 704(c) applies to partnership property, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(*g*) of this section for allocation to them of depreciation, depletion, amortization, and gain and loss, as computed for book purposes, with respect to such property. See example (13)(i) of paragraph (b)(5) of this section.

(*e*) *Distributed property—(1) In general.* The basic capital accounting rules contained in paragraph (b)(2)(iv) (*b*) of this section require that a partner's capital account be decreased by the fair market value of property distributed by the partnership (without regard to section 7701(g)) to such partner (whether in connection with a

liquidation or otherwise). To satisfy this requirement, the capital accounts of the partners first must be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in such property (that has not been reflected in the capital accounts previously) would be allocated among the partners if there were a taxable disposition of such property for the fair market value of such property (taking section 7701(g) into account) on the date of distribution. See example (14)(v) of paragraph (b)(5) of this section.

(*2*) *Distribution of promissory notes.* Notwithstanding the general rule of paragraph (b)(2)(iv)(*b*)(*5*), except as provided in this paragraph (b)(2)(iv)(*e*)(*2*), if a promissory note is distributed to a partner by a partnership that is the maker of such note, such partner's capital account will be decreased with respect to such note only when there is a taxable disposition of such note by the partner or when the partnership makes principal payments on the note. The previous sentence shall not apply if a note distributed to a partner by a partnership who is the maker of such note is readily tradable on an established securities market. Furthermore, the capital account of a partner whose interest in a partnership is liquidated will be reduced to the extent of (*i*) the fair market value, at the time of distribution, of any negotiable promissory note (of which such partnership is the maker) that such partnership distributes to the partner on or after the date such partner's interest is liquidated and within the time specified in paragraph (b)(2)(ii)(*b*)(*2*) of this section, and (*ii*) the fair market value, at the time of liquidation, of the unsatisfied portion of any negotiable promissory note (of which such partnership is the maker) that such partnership previously distributed to the partner. For purposes of the preceding sentence, the fair market value of a note will be no less than the outstanding principal balance of such note, provided that such note bears interest at a rate no less than the applicable federal rate at time of valuation.

(*f*) *Revaluations of property.* A partnership agreement may, upon the occurrence of certain events, increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property on the partnership's books. Capital accounts so adjusted will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless—

(*1*) The adjustments are based on the fair market value of partnership property (taking section 701(g) into account) on the date of adjustment, and

(*2*) The adjustments reflect the manner in which the unrealized income, gain, loss, or deduction inherent in such property (that has not been reflected in the capital accounts previously) would be allocated among the partners if there were a taxable disposition of such property for such fair market value on that date, and

(*3*) The partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(*g*) of this section for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property, and

(*4*) The partnership agreement requires that the partners' distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to such property be determined so as to take account of the variation between the adjusted tax basis and book value of such property in the same manner as under section 704(c) (see paragraph (b)(4)(i) of this section), and

(*5*) The adjustments are made principally for a substantial non-tax business purpose—

(*i*) In connection with a contribution of money or other property (other than a *de minimis* amount) to the partnership by a new or existing partner as consideration for an interest in the partnership, or

(*ii*) In connection with a distribution of money or other property (other than a *de minimis* amount) by the partnership to a retiring or continuing partner as consideration for an interest in the partnership, or

(*iii*) Under generally accepted industry accounting practices, provided substantially all of the partnership's property (excluding money) consists of stock, securities, commodities, options, warrants, futures, or similar instruments that are readily tradable on an established securities market.

See example (14) and (18) of paragraph (b)(5) of this section. If the capital accounts of the partners are not adjusted to reflect the fair market value of partnership property when an interest in the partnership is acquired from or relinquished to the partnership, paragraphs (b)(1)(iii) and (b)(1)(iv) of this section should be consulted regarding the potential tax consequences that may arise if the principles of section 704(c) are not applied to determine the partners' distributive shares of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, with respect to such property.

(*g*) *Adjustments to reflect book value*—(*1*) *In general.* Under paragraphs (b)(2)(iv)(*d*) and (b)(2)(iv)(*f*) of this section, property may be properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property. In these circumstances, paragraphs (b)(2)(iv)(*d*)(*3*) and (b)(2)(iv)(*f*)(*3*) of this section provide that the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires the partners' capital accounts to be adjusted in accordance with this paragraph (b)(2)(iv)(*g*) for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property. In determining whether the economic effect of an allocation of book items is substantial, consideration will be given to the effect of such allocation on the determination of the partners' distributive shares of corresponding tax items under section 704(c) and paragraph (b)(4)(i) of this section. See example (17) of paragraph (b)(5) of this section. If an allocation of book items under the partnership agreement does not have substantial economic effect (as determined under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section), or is not otherwise respected under this paragraph, such items will be reallocated in accordance with the partners' interests in the partnership, and such reallocation will be the basis upon which the partners' distributive shares of the corresponding tax items are determined under section 704(c) and paragraph (b)(4)(i) of this section. See examples (13), (14), and (18) of paragraph (b)(5) of this section.

(*2*) *Payables and receivables.* References in this paragraph (b)(2)(iv) and paragraph (b)(4)(i) of this section to book and tax depreciation, depletion, amortization, and gain or loss with respect to property that has an adjusted tax basis that differs from book value include, under analogous rules and principles, the unrealized income or deduction with respect to accounts receivable, accounts payable, and other accrued but unpaid items.

(*3*) *Determining amount of book items.* The partners' capital accounts will not be considered adjusted in accordance with this paragraph (b)(2)(iv)(*g*) unless book depreciation, depletion, and amortization with respect to partnership property are computed in accordance with a reasonable method selected by

the partnership, and under such method (*i*) if the book value of partnership property exceeds the adjusted tax basis thereof, the depreciation, depletion, or amortization, as computed for book purposes, will be no less than the depreciation, depletion, or amortization, as computed for tax purposes, and (*ii*) if the adjusted tax basis of partnership property exceeds the book value thereof, the depreciation, depletion, or amortization, as computed for book purposes, will be no greater than the depreciation, depletion, or amortization, as computed for tax purposes, and (iii) if the book value of partnership property equals the adjusted tax basis thereof, the depreciation, depletion, or amortization, as computed for book purposes, will equal the depreciation, depletion, or amortization, as computed for tax purposes.

(*h*) *Determinations of fair market value.* For purposes of this paragraph (b)(2)(iv), the fair market value assigned to property contributed to a partnership, property distributed by a partnership, or property otherwise revalued by a partnership, will be regarded as correct, provided that (*1*) such value is reasonably agreed to among the partners in arm's-length negotiations, and (*2*) the partners have sufficiently adverse interests. If, however, these conditions are not satisfied and the value assigned to such property is overstated or understated (by more than an insignificant amount), the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv). Valuation of property contributed to the partnership, distributed by the partnership, or otherwise revalued by the partnership shall be on a property-by-property basis, except to the extent the regulations under section 704(c) permit otherwise.

(*i*) *Section 705(a)(2)(B) expenditures—(1) In general.* The basic capital accounting rules contained in paragraph (b)(2)(iv)(*b*) of this section require that a partner's capital account be decreased by allocations made to such partner of expenditures described in section 705(a)(2)(B). See example (11) of paragraph (b)(5) of this section. If an allocation of these expenditures under the partnership agreement does not have substantial economic effect (as determined under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section), or is not otherwise respected under this paragraph, such expenditures will be reallocated in accordance with the partners' interest in the partnership.

(*2*) *Expenses described in section 709.* Except for amounts with respect to which an election is properly made under section 709(b), amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such a partnership shall, solely for purposes of this paragraph, be treated as section 705(a)(2)(B) expenditures, and upon liquidation of the partnership no further capital account adjustments will be made in respect thereof.

(*3*) *Disallowed losses.* If a deduction for a loss incurred in connection with the sale or exchange of partnership property is disallowed to the partnership under section 267(a)(1) or section 707(b), that deduction shall, solely for purposes of this paragraph, be treated as a section 705(a)(2)(B) expenditure.

(j) *Basis adjustments to section 38 property.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless such capital accounts are adjusted by the partners' shares of any upward or downward basis adjustments allocated to them under this paragraph (b)(2)(iv)(*j*). When there is a reduction in the adjusted tax basis of partnership section 38 property under section 48(q)(1) or section 48(g)(3), section 48(g)(6) provides for an equivalent downward adjustment to the aggregate basis of partnership interests (and no additional adjustment is made under section 705(a)(2)(B)). These downward basis adjustments shall be shared among the partners in the same proportion as the adjusted tax basis or cost of (or the qualified investment in) such section 38 property is allocated among the partners under paragraph (f) of § 1.46–3 (or paragraph (a)(4)(iv) of § 1.48–8). See example (2)(iii) of paragraph (b)(5) of this section. Conversely, when there is an increase in the adjusted tax basis of partnership section 38 property under section 48(q)(2), section 48(q)(6) provides for an equivalent upward adjustment to the aggregate basis of partnership interests. These upward adjustments shall be allocated among the partners in the same proportion as the investment tax credit from such property is recaptured by the partners under § 1.47–6.

(*k*) *Depletion of oil and gas properties*—(1) *In general.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless such capital accounts are adjusted for depletion and gain or loss with respect to the oil or gas properties of the partnership in accordance with this paragraph (b)(2)(iv)(*k*).

(*2*) *Simulated depletion.* Except as provided in paragraph (b)(2)(iv)(*k*) (*3*) of this section, a partnership shall, solely for purposes of maintaining capital accounts under this paragraph, compute simulated depletion allowances with respect to its oil and gas properties at the partnership level. These allowances shall be computed on each depletable oil or gas property of the partnership by using either the cost depletion method or the percentage depletion method (computed in accordance with section 613 at the rates specified in section 613A(c)(5) without regard to the limitations of section 613A, which theoretically could apply to any partner) for each partnership taxable year that the property is owned by the partnership and subject to depletion. The choice between the simulated cost depletion method and the simulated percentage depletion method shall be made on a property-by-property basis in the first partnership taxable year beginning after April 30, 1986, for which it is relevent for the property, and shall be binding for all partnership taxable years during which the oil or gas property is held by the partnership. The partnership shall make downward adjustments to the capital accounts of the partners for the simulated depletion allowance with respect to each oil or gas property of the partnership, in the same proportion as such partners (or their precedecessors in interest) were properly allocated the adjusted tax basis of each such property. The aggregate capital account adjustments for simulated percentage depletion allowances with respect to an oil or gas property of the partnership shall not exceed the aggregate adjusted tax basis allocated to the partners with respect to such property. Upon the taxable disposition of an oil or gas property by a partnership, such partnership's simulated gain or loss shall be determined by subtracting its simulated adjusted basis in such property from the amount realized upon such disposition. (The partnership's simulated adjusted basis in an oil or gas property is determined in the same manner as adjusted tax basis except that simulated depletion allowances are taken into account instead of actual depletion allowances.) The capital accounts of the partners shall be adjusted upward by the amount of any simulated gain in proportion to such partners' allocable shares of the portion of the total amount realized from the disposition of such property that exceeds the partnership's simulated adjusted basis in such property. The capital accounts of such partners shall be adjusted downward by

the amount of any simulated loss in proportion to such partners' allocable shares of the total amount realized from the disposition of such property that represents recovery of the partnership's simulated adjusted basis in such property. See section 613A(c)(7)(D) and the regulations thereunder and paragraph (b)(4)(v) of this section. See example (19)(iv) of paragraph (b)(5) of this section.

(*3*) *Actual depletion.* Pursuant to section 613A(c)(7)(D) and the regulations thereunder, the depletion allowance under section 611 with respect to the oil and gas properties of a partnership is computed separately by the partners. Accordingly, in lieu of adjusting the partner's capital accounts as provided in paragraph (b)(2)(iv)(*k*)(*2*) of this section, the partnership may make downward adjustments to the capital account of each partner equal to such partner's depletion allowance with respect to each oil or gas property of the partnership (for the partner's taxable year that ends with or within the partnership's taxable year). The aggregate adjustments to the capital account of a partner for depletion allowances with respect to an oil or gas property of the partnership shall not exceed the adjusted tax basis allocated to such partner with respect to such property. Upon the taxable disposition of an oil or gas property by a partnership, the capital account of each partner shall be adjusted upward by the amount of any excess of such partner's allocable share of the total amount realized from the disposition of such property over such partner's remaining adjusted tax basis in such property. If there is no such excess, the capital account of such partner shall be adjusted downward by the amount of any excess of such partner's remaining adjusted tax basis in such property over such partner's allocable share of the total amount realized from the disposition thereof. See section 613A(c)(7)(4)(D) and the regulations thereunder and paragraph (b)(4)(v) of this section.

(*4*) *Effect of book values.* If an oil or gas property of the partnership is, under paragraphs (b)(2)(iv(*d*) or (b)(2)(iv)(*f*) of this section, properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property, the rules contained in this paragraph (b)(2)(iv)(*k*) and paragraph (b)(4)(v) of this section shall be applied with reference to such book value. A revaluation of a partnership oil or gas property under paragraph (b)(2)(iv)(*f*) of this section may give rise to a reallocation of the adjusted tax basis of such property, or a change in the partners' relative shares of simulated depletion from such property, only to the extent permitted by section 613A(c)(7)(D) and the regulations thereunder.

(*l*) *Transfers of partnership interests.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless, upon the transfer of all or a part of an interest in the partnership, the capital account of the transferor that is attributable to the transferred interest carries over to the transferee partner. (See paragraph (b)(2)(iv)(*m*) of this section for rules concerning the effect of a section 754 election on the capital accounts of the partners.) However, if the transfer of an interest in a partnership causes a termination of the partnership under section 708(b)(1)(B), the capital account that carriers over to the transferee partner will be adjusted in accordance with paragraph (b)(2)(iv)(*e*) of this section in connection with the constructive liquidation of the partnership under paragraph (b)(1)(iv) of § 1.708–1. Moreover, the constructive reformation of such partnership will, for purposes of this paragraph, be treated as the formation of a new partnership, and the capital accounts of the partners of such new partnership will be determined and maintained accordingly. See example (13) of paragraph (b)(5) of this section.

(*m*) *Section 754 elections*—(*1*) *In general.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless, upon adjustment to the adjusted tax basis of partnership property under section 732, 734, or 743, the capital accounts of the partners are adjusted as provided in this paragraph (b)(2)(iv)(*m*).

(*2*) *Section 743 adjustments.* In the case of a transfer of all or a part of an interest in a partnership that has a section 754 election in effect for the partnership taxable year in which such transfer occurs, adjustments to the adjusted tax basis of partnership property under section 743 shall not be reflected in the capital account of the transferee partner or on the books of the partnership, and subsequent capital account adjustments for distributions (see paragraph (b)(2)(iv)(*e*)(1) of this section) and for depreciation, depletion, amortization, and gain or loss with respect to such property will disregard the effect of such basis adjustment. The preceding sentence shall not apply to the extent such basis adjustment is allocated to the common basis of partnership property under paragraph (b)(1) of § 1.734–2; in these cases, such basis adjustment shall, except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, give rise to adjustments to the capital accounts of the partners in accordance with their interests in the partnership under paragraph (b)(3) of this section. See examples (13) (iii) and (iv) of paragraph (b)(5) of this section.

(*3*) *Section 732 adjustments.* In the case of a transfer of all or a part of an interest in a partnership that does not have a section 745 election in effect for the partnership taxable year in which such transfer occurs, adjustments to the adjusted tax basis of partnership property under section 732(d) will be treated in the capital accounts of the partners in the same manner as section 743 basis adjustments are treated under paragraph (b)(2)(iv)(*m*)(*2*) of this section.

(*4*) *Section 734 adjustments.* Except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, in the case of a distribution of property by a partnership that has a section 754 election in effect for the partnership taxable year in which the distribution occurs, the partner who receives a distribution that gives rise to the adjustment to the adjusted tax basis of partnership property under section 734 shall have a corresponding adjustment made to his capital account.

(*5*) *Limitations on adjustments.* Adjustments may be made to the capital account of a partner (or his successor in interest) in respect of basis adjustments to partnership property under sections 732, 734, and 743 only to the extent that such basis adjustments (i) are permitted to be made to one or more items of partnership property under section 755, and (ii) result in an increase or a decrease in the amount at which such property is carried on the partnership's balance sheet, as computed for book purposes. For example, if the book value of partnership property exceeds the adjusted tax basis of such property, a basis adjustment to such property may be reflected in a partner's capital account only to the extent such adjustment exceeds the difference between the book value of such property and the adjusted tax basis of such property prior to such adjustment.

(*n*) *Partnership level characterization.* Except as otherwise provided in paragraph (b)(2)(iv)(k) of this section, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless adjustments to such capital accounts in respect of partnership income, gain, loss, deduction, and section 705(a)(2)(B)

expenditures (or item thereof) are made with reference to the Federal tax treatment of such items (and in the case of book items, with reference to the Federal tax treatment of the corresponding tax items) at the partnership level, without regard to any requisite or elective tax treatment of such items at the partner level (for example, under section 58(i)). However, a partnership that incurs mining exploration expenditures will determine the Federal tax treatment of income, gain, loss, and deduction with respect to the property to which such expenditures relate at the partnership level only after first taking into account the elections made by its partners under section 617 and section 703(b)(4).

(*o*) *Guaranteed payments.* Guaranteed payments to a partner under section 707(c) cause the capital account of the recipient partner to be adjusted only to the extent of such partner's distributive share of any partnership deduction, loss, or other downward capital account adjustment resulting from such payment.

(*p*) *Minor discrepancies.* Discrepancies between the balances in the respective capital accounts of the partners and the balances that would be in such respective capital accounts if they had been determined and maintained in accordance with this paragraph (b)(2)(iv) will not adversely affect the validity of an allocation, provided that such discrepancies are minor and are attributable to good faith error by the partnership.

(*q*) *Adjustments where guidance is lacking.* If the rules of this paragraph (b)(2)(iv) fail to provide guidance on how adjustments to the capital accounts of the partners should be made to reflect particular adjustments to partnership capital on the books of the partnership, such capital accounts will not be considered to be determined and maintained in accordance with those rules unless such capital account adjustments are made in a manner that (*1*) maintains equality between the aggregate governing capital accounts of the partners and the amount of partnership capital reflected on the partnership's balance sheet, as computed for book purposes, (*2*) is consistent with the underlying economic arrangement of the partners, and (*3*) is based, wherever practicable, on Federal tax accounting principles.

(*r*) *Restatement of Capital Accounts.* With respect to partnerships that began operating in a taxable year beginning before May 1, 1986, the capital accounts of the partners of which have not been determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) since inception, such capital accounts shall not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) for taxable years beginning after April 30, 1986, unless (*1*) such capital accounts are adjusted, effective for the first partnership taxable year beginning after April 30, 1986, to reflect the fair market value of partnership property as of the first day of such taxable year, and (*2*) in connection with such adjustment, the rules contained in paragraph (b)(2)(iv)(*f*)(*2*), (*3*), and (*4*) of this section are satisfied. However, compliance with the previous sentence will have no bearing on the validity of allocations that relate to partnership taxable years beginning before May 1, 1986.

(3) *Partner's interest in the partnership*—(i) *In general.* References in section 704(b) and this paragraph to a partner's interest in the partnership, or to the partner's interests in the partnership, signify the manner in which the partners have agreed to share the economic benefit or burden with respect to the income, gain, loss, deduction, or credit (or item thereof) that is allocated. This sharing arrangement may or may not correspond to the overall economic arrangement of the partners. Thus, a partner who has a 50 percent overall interest in the partnership may have a 90 percent interest in a particular item of income or deduction. The determination of a partner's interest in a partnership shall be made by taking into account all facts and circumstances relating to the economic arrangement of the partners. All partners' interests in the partnership are presumed to be equal (determined on a per capita basis). However, this presumption may be rebutted by the taxpayer or the Internal Revenue Service by establishing facts and circumstances that show that the partners' interests in the partnership are otherwise.

(ii) *Factors considered.* In determining a partner's interest in the partnership, the following factors are among those that will be considered:

(*a*) The partners' relative contributions to the partnership,

(*b*) The interests of the partners in economic profits and losses (if different than that in taxable income or loss),

(*c*) The interests of the partners in cash flow and other non-liquidating distributions, and

(*d*) The rights of the partners to distributions of capital upon liquidation.

The provisions of this subparagraph (b)(3) are illustrated by examples (1)(i) and (ii), (4)(i), (5)(i) and (ii), (6), (7)(i), (ii), and (iv), (8), (10)(ii), 16(i), and (19)(iii) of paragraph (b)(5) of this section. See paragraph (b)(4)(i) of this section concerning rules for determining the partners' interests in the partnership with respect to certain tax items.

(*iii*) *Certain determinations.* If—

(*a*) Requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied, and

(*b*) All or a portion of an allocation of income, gain, loss, or deduction made to a partner for a partnership taxable year does not have economic effect under paragraph (b)(2)(ii) of this section.

the partners' interests in the partnership with respect to the portion of the allocation that lacks economic effect will be determined by comparing the manner in which distributions (and contributions) would be made if all partnership property were sold at book value and the partnership were liquidated immediately following the end of the taxable year to which the allocation relates with the manner in which distributions (and contributions) would be made if all partnership property were sold at book value and the partnership were liquidated immediately following the end of the prior taxable year, and adjusting the result for the items described in (*4*), (*5*), and (*6*) of paragraph (b)(2)(ii)(*d*) of this section. A determination made under this paragraph (b)(3)(iii) will have no force if the economic effect of valid allocations made in the same manner is insubstantial under paragraph (b)(2)(iii) of this section. See examples (1) (iv), (v), and (vi), and (15) (ii) and (iii) of paragraph (b)(5) of this section.

(4) *Special rules*—(i) *Allocations to reflect revaluations.* If partnership property is, under paragraphs (b)(2)(iv)(*d*) or (b)(2)(iv)(*f*) of this section, properly reflected in the capital accounts of the partners and on the books of the partnership at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property will be greater or less than the depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to such property. In these cases the capital accounts of the partners are required to be adjusted solely for allocations of the book items to such partners (see paragraph (b)(2)(iv)(*g*) of this section), and the partners' shares of the corresponding tax items are not independently reflected by further adjustments to the partners' capital accounts. Thus, separate allocations of these tax items cannot have economic effect under paragraph (b)(2)(ii)(*b*)(*1*) of this section, and the partners' distributive shares of such tax items

must (unless governed by section 704(c)) be made in accordance with the partners' interests in the partnership. These tax items must be shared among the partners in a manner that takes account of the variation between the adjusted tax basis of such property and its book value in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the partnership are taken into account in determining the partners' shares of tax items under section 704(c). See examples (14) and (18) of paragraph (b)(5) of this section.

(ii) *Credits.* Allocations of tax credits and tax credit recapture are not reflected by adjustments to the partners' capital accounts (except to the extent that adjustments to the adjusted tax basis of partnership section 38 property in respect of tax credits and tax credit recapture give rise to capital account adjustments under paragraph (b)(2)(iv)(*f*) of this section). Thus, such allocations cannot have economic effect under paragraph (b)(2)(ii)(*b*)(*1*) of this section, and the tax credits and tax credit recapture must be allocated in accordance with the partners' interests in the partnership as of the time the tax credit or credit recapture arises. With respect to the investment tax credit provided by section 38, allocations of cost or qualified investment made in accordance with paragraph (f) of § 1.46–3 and paragraph (a)(4)(iv) of § 1.48–8 shall be deemed to be made in accordance with the partners' interests in the partnership. With respect to other tax credits, if a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership taxable year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for such year, then the partners' interests in the partnership with respect to such credit (or the cost giving rise thereto) shall be in the same proportion as such partners' respective distributive shares of such loss or deduction (and adjustments). See example (11) of paragraph (b)(5) of this section. Identical principles shall apply in determining the partners' interests in the partnership with respect to tax credits that arise from receipts of the partnership (whether or not taxable).

(iii) *Excess percentage depletion.* To the extent the percentage depletion in respect of an item of depletable property of the partnership exceeds the adjusted tax basis of such property, allocations of such excess percentage depletion are not reflected by adjustments to the partners' capital accounts. Thus, such allocations cannot have economic effect under paragraph (b)(2)(ii)(*b*)(*1*) of this section, and such excess percentage depletion must be allocated in accordance with the partners' interests in the partnership. The partners' interests in the partnership for a partnership taxable year with respect to such excess percentage depletion shall be in the same proportion as such partners' respective distributive shares of gross income from the depletable property (as determined under section 613(c)) for such year. See example (12) of paragraph (b)(5) of this section. See paragraphs (b)(2)(iv)(*k*) and (b)(4)(v) of this section for special rules concerning oil and gas properties of the partnership.

(iv) *Nonrecourse debt.* [Reserved.]

(v) *Allocations under section 613A(c)(7)(D).* Allocations of the adjusted tax basis of a partnership oil or gas property are controlled by section 613A(c)(7)(D) and the regulations thereunder. However, if the partnership agreement provides for an allocation of the adjusted tax basis of an oil or gas property among the partners, and such allocation is not otherwise governed under section 704(c) (or related principles under paragraph (b)(4)(i) of this section), that allocation will be recognized as being in accordance with the partners' interests in partnership capital under section 613A(c)(7)(D), provided (*a*) such allocation does not give rise to capital account adjustments under paragraph (b)(2)(iv)(*k*) of this section the economic effect of which are insubstantial (as determined under paragraph (b)(2)(iii) of this section), and (*b*) all other allocations and capital account adjustments under the partnership agreement are recognized under this paragraph. Otherwise, such adjusted tax basis must be allocated among the partners pursuant to section 613A(c)(7)(D) in accordance with the partners' actual interests in partnership capital or income. For purposes of section 613A(c)(7)(D) the partners' allocable shares of the amount realized upon the partnership's taxable disposition of an oil or gas property will, except to the extent governed by section 704(c) (or related principles under paragraph (b)(4)(i) of this section), be determined under this paragraph (b)(4)(v). If, pursuant to paragraph (b)(2)(iv)(*k*)(*2*) of this section, the partners' capital accounts are adjusted to reflect the simulated depletion of an oil or gas property of the partnership, the portion of the total amount realized by the partnership upon the taxable disposition of such property that represents recovery of its simulated adjusted tax basis therein will be allocated to the partners in the same proportion as the aggregate adjusted tax basis of such property was allocated to such partners (or their predecessors in interest). If, pursuant to paragraph (b)(2)(iv)(*k*)(*3*) of this section, the partners' capital accounts are adjusted to reflect the actual depletion of an oil or gas property of the partnership, the portion of the total amount realized by the partnership upon the taxable disposition of such property that equals the partners' aggregate remaining adjusted basis therein will be allocated to the partners in proportion to their respective remaining adjusted tax bases in such property. An allocation provided by the partnership agreement of the portion of the total amount realized by the partnership on its taxable disposition of an oil or gas property that exceeds the portion of the total amount realized allocated under either of the previous two sentences (whichever is applicable) shall be deemed to be made in accordance with the partners' allocable shares of such amount realized, provided (*c*) such allocation does not give rise to capital account adjustments under paragraph (b)(2)(iv)(*k*) of this section the economic effect of which is insubstantial (as determined under paragraph (b)(2)(ii) of this section), and (*d*) all other allocations and capital account adjustments under the partnership agreement are recognized under this paragraph. Otherwise, the partners' allocable shares of the total amount realized by the partnership on its taxable disposition of an oil or gas property shall be determined in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. See example (19) of paragraph (b)(5) of this section. (See paragraph (b)(2)(iv)(*k*) of this section for the determination of appropriate adjustments to the partners' capital accounts relating to section 613A(c)(7)(D).)

(vi) *Amendments to partnership agreement.* If an allocation has substantial economic effect under paragraph (b)(2) of this section or is deemed to be made in accordance with the partners' interests in the partnership under paragraph (b)(4) of this section under the partnership agreement that is effective for the taxable year to which such allocation relates, and such partnership agreement thereafter is modified, both the tax consequences of the modification and the facts and circumstances surrounding the modification will be closely scrutinized to determine whether the purported modification was part of the original agreement. If it is determined that the

purported modification was part of the original agreement, prior allocations may be reallocated in a manner consistent with the modified terms of the agreement, and subsequent allocations may be reallocated to take account of such modified terms. For example, if a partner is obligated by the partnership agreement to restore the deficit balance in his capital account (or any limited dollar amount thereof) in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section and, thereafter, such obligation is eliminated or reduced (other than as provided in paragraph (b)(2)(ii)(*f*) of this section), or is not complied with in a timely manner, such elimination, reduction, or noncompliance may be treated as if it always were part of the partnership agreement for purposes of making any reallocations and determining the appropriate limitations period.

(vii) *Recapture.* For special rules applicable to the allocation of recapture income or credit, see paragraph (e) of § 1.1245–1, paragraph (f) of § 1.1250–1, paragraph (c) of § 1.1254–1, and paragraph (a) of § 1.47–6.

(5) *Examples.* The operation of the rules in this paragraph is illustrated by the following examples:

Example (1). (i) A and B form a general partnership with cash contributions of $40,000 each, which cash is used to purchase depreciable personal property at a cost of $80,000. The partnership elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such property. The partnership agreement provides that A and B will have equal shares of taxable income and loss (computed without regard to cost recovery deductions) and cash flow and that all cost recovery deductions on the property will be allocated to A. The agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of the section, but that upon liquidation of the partnership, distributions will be made equally between the partners (regardless of capital account balances) and no partner will be required to restore the deficit balance in his capital account for distribution to partners with positive capital accounts balances. In the partnership's first taxable year, it recognizes operating income equal to its operating expenses and has an additional $20,000 cost recovery deduction, which is allocated entirely to A. That A and B will be entitled to equal distributions on liquidation, even through A is allocated the entire $20,000 cost recovery deduction, indicates A will not bear the full risk of the economic loss corresponding to such deduction if such loss occurs. Under paragraph (b)(2)(ii) of this section, the allocation lacks economic effect and will be disregarded. The partners made equal contributions to the partnership, share equally in other taxable income and loss and in cash flow, and will share equally in liquidation proceeds, indicating that their actual economic arrangement is to bear the risk imposed by the potential decrease in the value of the property equally. Thus, under paragraph (b)(3) of this section the partners' interests in the partnership are equal, and the cost recovery deduction will be reallocated equally between A and B.

(ii) Asssume the same facts as in (i) except that the partnership agreement provides that liquidation proceeds will be distributed in accordance with capital account balances if the partnership is liquidated during the first five years of its existence but that liquidation proceeds will be distributed equally if the partnership is liquidated thereafter. Since the partnership agreement does not provide for the requirement contained in paragraph (b)(2)(ii)(*b*)(*2*) of this section to be satisified throughout the term of the partnership, the partnership allocations do not have economic effect. Even if the partnership agreement provided for the requirement contained in paragraph (b)(2)(ii)(*b*)(*2*) to be satisified throughout the term of the partnership, such allocations would not have economic effect unless the requirement contained in paragraph (b)(2)(ii)(*b*)(*3*) of this section or the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section were satisfied.

(iii) Assume the same facts as in (i) except that distributions in liquidation of the partnership (or any partner's interest) are to be made in accordance with the partners' positive capital account balances throughout the term of the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section). Assume further that the partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section) and that, as of the end of each partnership taxable year, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in A's capital account.

	A	B
Capital account upon formation	$40,000	$40,000
Less: year 1 cost recovery deduction	(20,000)	0
Capital account at end of year 1	$20,000	$40,000

Under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section, the allocation of the $20,000 cost recovery deduction to A has economic effect.

(iv) Assume the same facts as in (iii) and that in the partnership's second taxable year it recognizes operating income equal to its operating expenses and has a $25,000 cost recovery deduction which, under the partnership agreement, is allocated entirely to A.

	A	B
Capital account at beginning of year 2	$20,000	$40,000
Less: year 2 cost recovery deduction	(25,000)	0
Capital account at end of year 2	($5,000)	$40,000

The allocation of the $25,000 cost recovery deduction to A satisfies that alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section only to the extent of $20,000. Therefore, only $20,000 of such allocation has economic effect, and the remaining $5,000 must be reallocated in accordance with the partners' interests in the partnership. Under the partnership agreement, if the property were sold immediately following the end of the partnership's second taxable year for $35,000 (its adjusted tax basis), the $35,000 would be distributed to B. Thus, B, and not A, bears the economic burden corresponding to $5,000 of the $25,000 cost recovery deduction allocated to A. Under paragraph (b)(3)(iii) of this section, $5,000 of such cost recovery deduction will be reallocated to B.

(v) Assume the same facts as in (iv) except that the cost recovery deduction for the partnershp's second taxable year is $20,000 instead of $25,000. The allocation of such cost recovery deduction to A has economic effect under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section. Assume further that the property is sold for $35,000 immediately following the end of the partnership's second taxable year, resulting in a $5,000 taxable loss ($40,000 adjusted tax basis less $35,000 sales price), and the partnership is liquidated.

	A	B
Capital account at beginning of year 2	$20,000	$40,000
Less: year 2 cost recovery deduction	(20,000)	0
Capital account at end of year 2	0	$40,000
Less: loss on sale	(2,500)	(2,500)
Capital account before liquidation	($2,500)	$37,500

Under the partnership agreement the $35,000 sales proceeds are distributed to B. Since B bears the entire economic burden corresponding to the $5,000 taxable loss from the sale of the property, the allocation of $2,500 of such loss to A does not have economic effect and must be reallocated in accordance with the partners' interests in the partnership. Under paragraph (b)(3)(iii) of this section, such $2,500 loss will be reallocated to B.

(vi) Assume the same facts as in (iv) except that the cost recovery deduction for the partnership's second taxable year is $20,000 instead of $25,000, and that as of the end of the partnership's second taxable year it is reasonably expected that during its third taxable year the partnership will (1) have operating income equal to its operating expenses (but will have no cost recovery deductions), (2) borrow $10,000 (recourse) and distribute such amount $5,000 to A and $5,000 to B, and (3) thereafter sell the partnership property, repay the $10,000 liability, and liquidate. In determining the extent to which the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section is satisfied as of the end of the partnership's second taxable year, the fair market value of partnership property is presumed to be equal to its adjusted tax basis (in accordance with paragraph (b)(2)(iii)(*c*) of

this section). Thus, it is presumed that the selling price of such property during the partnership's third taxable year will be its $40,000 adjusted tax basis. Accordingly, there can be no reasonable expectation that there will be increases to A's capital account in the partnership's third taxable year that will offset the expected $5,000 distribution to A. Therefore, the distribution of the loan proceeds must be taken into account in determining to what extent the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) is satisfied.

	A	B
Capital account at beginning of year 2	$20,000	$40,000
Less: expected future distribution	(5,000)	(5,000)
Less: year 2 cost recovery deduction	(20,000)	(0)
Hypothetical capital account at end of year 2	($5,000)	$35,000

Upon sale of the partnership property, the $40,000 presumed sales proceeds would be used to repay the $10,000 liability, and the remaining $30,000 would be distributed to B. Under these circumstances the allocation of the $20,000 cost recovery deduction to A in the partnership's second taxable year satisfies the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section only to the extent of $15,000. Under paragraph (b)(3)(iii) of this section, the remaining $5,000 of such deduction will be reallocated to B. The results in this example would be the same even if the partnership agreement also provided that any gain (whether ordinary income or capital gain) upon the sale of the property would be allocated to A to the extent of the prior allocations of cost recovery deductions to him, and, at end of the partnership's second taxable year, the partners were confident that the gain on the sale of the property in the partnership's third taxable year would be sufficient to offset the expected $5,000 distribution to A.

(vii) Assume the same facts as in (iv) except that the partnership agreement also provides that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section). Thus, if the property were sold for $35,000 immediately after the end of the partnership's second taxable year, the $35,000 would be distributed to B. A would contribute $5,000 (the deficit balance in his capital account) to the partnership, and that $5,000 would be distributed to B. The allocation of the entire $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect.

(viii) Assume the same facts as in (vii) except that A's obligation to restore the deficit balance in his capital account is limited to a maximum of $5,000. The allocation of the $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section. At the end of such year, A makes an additional $5,000 contribution to the partnership (thereby eliminating the $5,000 deficit balance in his capital account). Under paragraph (b)(2)(ii)(*f*) of this section, A's obligation to restore up to $5,000 of the deficit balance in his capital account may be eliminated after he contributes the additional $5,000 without affecting the validity of prior allocations.

(ix) Assume the same facts as in (iv) except that upon formation of the partnership A also contributes to the partnership his promissory note with a $5,000 principal balance. The note unconditionally obligates A to pay an additional $5,000 to the partnership at the earlier of (a) the beginning of the partnership's fourth taxable year, or (b) the end of the partnership taxable year in which A's interest is liquidated. Under paragraph (b)(2)(ii)(*c*) of this section, A is considered obligated to restore up to $5,000 of the deficit balance in his capital account to the partnership. Accordingly, under the alternate economic effect test contained in partnership (b)(2)(ii)(*d*) of this section, the allocation of the $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect. The results in this example would be the same if (1) the note A contributed to the partnership were payable only at the end of the partnership's fourth taxable year (so that A would not be required to satisfy the note upon liquidation of his interest in the partnership), and (2) the partnership agreement provided that upon liquidation of A's interest, the partnership would retain A's note, and A would contribute to the partnership the excess of the outstanding principal balance of the note over its then fair market value.

(x) Assume the same facts as in (ix) except that A's obligation to contribute an additional $5,000 to the partnership is not evidenced by a promissory note. Instead, the partnership agreement imposes upon A the obligation to make an additional $5,000 contribution to the partnership at the earlier of (a) the beginning of the partnership's fourth taxable year, or (b) the end of the partnership taxable year in which A's interest is liquidated. Under paragraph (b)(2)(ii)(*c*) of this section, as a result of A's deferred contribution requirement, A is considered obligated to restore up to $5,000 of the deficit balance in his capital account to the partnership. Accordingly, under the alternate economic effect test contained in paragraph (b)(2)(*ii*)(*d*) of this section, the allocation of the $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect.

(xi) Assume the same facts as in (vii) except that the partnership agreement also provides that any gain (whether ordinary income or capital gain) upon the sale of the property will be allocated to A to the extent of the prior allocations to A of cost recovery deductions from such property, and additional gain will be allocated equally between A and B. At the time the allocations of cost recovery deductions were made to A, the partners believed there would be gain on the sale of the property in an amount sufficient to offset the allocations of cost recovery deductions to A. Nevertheless, the existence of the gain chargeback provision will not cause the economic effect of the allocations to be insubstantial under paragraph (b)(2)(iii)(*c*) of this section, since in testing whether the economic effect of such allocations is substantial, the recovery property is presumed to decrease in value by the amount of such deductions.

Example (2). C and D form a general partnership solely to acquire and lease machinery that is 5-year recovery property under section 168. Each contributes $100,000, and the partnership obtains an $800,000 recourse loan to purchase the machinery. The partnership elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such machinery. The partnership, C, and D have calendar taxable years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section). The partnership agreement further provides that (a) partnership net taxable loss will be allocated 90 percent to C and 10 percent to D until such time as there is partnership net taxable income, and therefore C will be allocated 90 percent of such taxable income until he has been allocated partnership net taxable income equal to the partnership net taxable loss previously allocated to him, (b) all further partnership net taxable income or loss will be allocated equally between C and D, and (c) distributions of operating cash flow will be made equally between C and D. The partnership enters into a 12-year lease with a financially secure corporation under which the partnership expects to have a net taxable loss in each of its first 5 partnership taxable years due to cost recovery deductions with respect to the machinery and net taxable income in each of its following 7 partnership taxable years, in part due to the absence of such cost recovery deductions. There is a strong likelihood that the partnership's net taxable loss in partnership taxable years 1 through 5 will be $100,000, $90,000, $80,000, $70,000, and $60,000, respectively, and the partnership's net taxable income in partnership taxable years 6 through 12 will be $40,000, $50,000, $60,000, $70,000, $80,000, $90,000, and $100,000, respectively. Even though there is a strong likelihood that the allocations of net taxable loss in years 1 through 5 will be largely offset by other allocations in partnership taxable years 6 through 12, and even if it is assumed that the total tax liability of the partners in years 1 through 12 will be less than if the allocations had not been provided in the partnership agreement, the economic effect of the allocations will not be insubstantial under paragraph (b)(2)(iii)(*c*) of this section. This is because at the time such allocations became part of the partnership agreement, there was a strong likelihood that the allocations of net taxable loss in years 1 through 5 would not be largely offset by allocations of income

within 5 years (determined on a first-in, first-out basis). The year 1 allocation will not be offset until years 6, 7, and 8, the year 2 allocation will not be offset until years 8 and 9, the year 3 allocation will not be offset until years 9 and 10, the year 4 allocation will not be offset until years 10 and 11, and the year 5 allocation will not be offset until years 11 and 12.

Example (3). E and F enter into a partnership agreement to develop and market experimental electronic devices. E contributes $2,500 cash and agrees to devote his full-time services to the partnership. F contributes $100,000 cash and agrees to obtain a loan for the partnership for any additional capital needs. The partnership agreement provides that all deductions for research and experimental expenditures and interest on partnership loans are to be allocated to F. In addition, F will be allocated 90 percent, and E 10 percent, of partnership taxable income or loss, computed net of the deductions for such research and experimental expenditures and interest, until F has received allocations of such taxable income equal to the sum of such research and experimental expenditures, such interest expense, and his share of such taxable loss. Thereafter, E and F will share all taxable income and loss equally. Operating cash flow will be distributed equally between E and F. The partnership agreement also provides that E's and F's capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section). These allocations have economic effect. In addition, in view of the nature of the partnership's activities, there is not a strong likelihood at the time the allocations become part of the partnership agreement that the economic effect of the allocations to F of deductions for research and experimental expenditures and interest on partnership loans will be largely offset by allocations to F of partnership net taxable income. The economic effect of the allocations is substantial.

Example (4). (i) G and H contribute $75,000 and $25,000, respectively, in forming a general partnership. The partnership agreement provides that all income, gain, loss, and deduction will be allocated equally between the partners, that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, but that all partnership distributions will, regardless of capital account balances, be made 75 percent to G and 25 percent to H. Following the liquidation of the partnership, neither partner is required to restore the deficit balance in his capital account to the partnership for distribution to partners with positive capital account balances. The allocations in the partnership agreement do not have economic effect. Since contributions were made in a 75/25 ratio and the partnership agreement indicates that all economic profits and losses of the partnership are to be shared in a 75/25 ratio, under paragraph (b)(3) of this section, partnership income, gain, loss, and deduction will be reallocated 75 percent to G and 25 percent to H.

(ii) Assume the same facts as in (i) except that the partnership maintains no capital accounts and the partnership agreement provides that all income, gain, loss, deduction, and credit will be allocated 75 percent to G and 25 percent to H. G and H are ultimately liable (under a State law right of contribution) for 75 percent and 25 percent, respectively, of any debts of the partnership. Although the allocations do not satisfy the requirements of paragraph (b)(2)(ii)(*b*) of this section, the allocations have economic effect under the economic effect equivalence test of paragraph (b)(2)(ii)(*i*) of this section.

(iii) Assume the same facts as in (i) except that the partnership agreement provides that any partner with a deficit balance in his capital account must restore that deficit to the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section). Although the allocations do not satisfy the requirements of paragraph (b)(2)(ii)(*b*) of this section, the allocations have economic effect under the economic effect equivalence test of paragraph (b)(2)(ii)(*i*) of this section.

Example (5). (i) Individuals I and J are the only partners of an investment partnership. The partnership owns corporate stocks, corporate debt instruments, and tax-exempt debt instruments. Over the next several years, I expects to be in the 50 percent marginal tax bracket, and J expects to be in the 15 percent marginal tax bracket. There is a strong likelihood that in each of the next several years the partnership will realize between $450 and $550 of tax-exempt interest and between $450 and $550 of a combination of taxable interest and dividends from its investments. I and J made equal capital contributions to the partnership, and they have agreed to share equally in gains and losses from the sale of the partnership's investment securities. I and J agree, however, that rather than share interest and dividends of the partnership equally, they will allocate the partnership's tax-exempt interest 80 percent to I and 20 percent to J and will distribute cash derived from interest received on the tax-exempt bonds in the same percentages. In addition, they agree to allocate 100 percent of the partnership's taxable interest and dividends to J and to distribute cash derived from interest and dividends received on the corporate stocks and debt instruments 100 percent to J. The partnership agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partner's positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The allocation of taxable interest and dividends and tax-exempt interest has economic effect, but that economic effect is not substantial under the general rules set forth in paragraph (b)(2)(iii) of this section. Without the allocation I would be allocated between $225 and $275 of tax-exempt interest and between $225 and $275 of a combination of taxable interest and dividends, which (net of Federal income taxes he would owe on such income) would give I between $337.50 and $412.50 after tax. With the allocation, however, I will be allocated between $360 and $440 of tax-exempt interest and no taxable interest and dividends, which (net of Federal income taxes) will give I between $360 and $440 after tax. Thus, at the time the allocations became part of the partnership agreement, I is expected to enhance his after-tax economic consequences as a result of the allocations. On the other hand, there is a strong likelihood that neither I nor J will substantially diminish his after-tax economic consequences as a result of the allocations. Under the combination of likely investment outcomes least favorable for J, the partnership would realize $550 of tax-exempt interest and $450 of taxable interest and dividends, giving J $492.50 after tax (which is more than the $466.25 after tax J would have received if each of such amounts had been allocated equally between the partners). Under the combination of likely investment outcomes least favorable for I, the partnership would realize $450 of tax-exempt interest and $550 of taxable interest and dividends, giving I $360 after tax (which is not substantially less than the $362.50 he would have received if each of such amounts had been allocated equally between the partners). Accordingly, the allocations in the partnership agreement must be reallocated in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section.

(ii) Assume the same facts as in (i). In addition, assume that in the first partnership taxable year in which the allocation arrangement described in (i) applies, the partnership realizes $450 of tax-exempt interest and $550 of taxable interest and dividends, so that, pursuant to the partnership agreement, I's capital account is credited with $360 (80 percent of the tax-exempt interest), and J's capital account is credited with $640 (20 percent of the tax-exempt interest and 100 percent of the taxable interest and dividends). The allocations of tax-exempt interest and taxable interest and dividends (which do not have substantial economic effect for the reasons stated in (i) will be disregarded and will be reallocated. Since under the partnership agreement I will receive 36 percent (360/1,000) and J will receive 64 percent (640/1,000) of the partnership's total investment income in such year, under paragraph (b)(3) of this section the partnership's tax-exempt interest and taxable interest and dividends each will be reallocated 36 percent to I and 64 percent to J.

Example (6). K and L are equal partners in a general partnership formed to acquire and operate property described in section 1231(b). The partnership, K, and L have calendar taxable years. The partnership agreement provides that the partners' capital accounts

will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). For a taxable year in which the partnership expects to incur a loss on the sale of a portion of such property, the partnership agreement is amended (at the beginning of the taxable year) to allocate such loss to K, who expects to have no gains from the sale of depreciable property described in section 1231(b) in that taxable year, and to allocate an equivalent amount of partnership loss and deduction for that year of a different character to L, who expects to have such gains. Any partnership loss and deduction in excess of these allocations will be allocated equally between K and L. The amendment is effective only for that taxable year. At the time the partnership agreement is amended, there is a strong likelihood that the partnership will incur deduction or loss in the taxable year other than loss from the sale of property described in section 1231(b) in an amount that will substantially equal or exceed the expected amount of the section 1231(b) loss. The allocations in such taxable year have economic effect. However, the economic effect of the allocations is insubstantial under the test described in paragraph (b)(2)(iii) (*b*) of this section because there is a strong likelihood, at the time the allocations become part of the partnership agreement, that the net increases and decreases to K's and L's capital accounts will be the same at the end of the taxable year to which they apply with such allocations in effect as they would have been in the absence of such allocations, and that the total taxes of K and L for such year will be reduced as a result of such allocations. If in fact the partnership incurs deduction or loss, other than loss from the sale of property described in section 1231(b), in an amount at least equal to the section 1231(b) loss, the loss and deduction in such taxable year will be reallocated equally between K and L under paragraph (b)(3) of this section. If not, the loss from the sale of property described in section 1231(b) and the items of deduction and other loss realized in such year will be reallocated between K and L in proportion to the net decreases in their capital accounts due to the allocation of such items under the partnership agreement.

Example (7). (i) M and N are partners in the MN general partnership, which is engaged in an active business. Income, gain, loss, and deduction from MN's business is allocated equally between M and N. The partnership, M, and N have calendar taxable years. Under the partnership agreement the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partner's positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). In order to enhance the credit standing of the partnership, the partners contribute surplus funds to the partnership, which the partners agree to invest in equal dollar amounts of tax-exempt bonds and corporate stock for the partnership's first 3 taxable years. M is expected to be in a higher marginal tax bracket than N during those 3 years. At the time the decision to make these investments is made, it is agreed that, during the 3-year period of the investment, M will be allocated 90 percent and N 10 percent of the interest income from the tax-exempt bonds as well as any gain or loss from the sale thereof, and that M will be allocated 10 percent and N 90 percent of the dividend income from the corporate stock as well as any gain or loss from the sale thereof. At the time the allocations concerning the investments become part of the partnership agreement, there is not a strong likelihood that the gain or loss from the sale of the stock will be substantially equal to the gain or loss from the sale of the tax-exempt bonds, but there is a strong likelihood that the tax-exempt interest and the taxable dividends realized from these investments during the 3-year period will not differ substantially. These allocations have economic effect, and the economic effect of the allocations of the gain or loss on the sale of the tex-exempt bonds and corporate stock is substantial. The economic effect of the allocations of the tax-exempt interest and the taxable dividends, however, is not substantial under the test described in paragraph (b)(2)(iii)(*c*) of this section because there is a strong likelihood, at the time the allocations become part of the partnership agreement, that at the end of the 3-year period to which such allocations relate, the net increases and decreases to M's and N's capital accounts will be the same with such allocations as they would have been in the absence of such allocations, and that the total taxes of M and N for the taxable years to which such allocations relate will be reduced as a result of such allocations. If in fact the amounts of the tax-exempt interest and taxable dividends earned by the partnership during the 3-year period are equal, the tax-exempt interest and taxable dividends will be reallocated to the partners in equal shares under paragraph (b)(3) of this section. If not, the tax-exempt interest and taxable dividends will be reallocated between M and N in proportion to the net increases in their capital accounts during such 3-year period due to the allocation of such items under the partnership agreement.

(ii) Assume the same facts as in (i) except that gain or loss from the sale of the tax-exempt bonds and corporate stock will be allocated equally between M and N and the partnership agreement provides that the 90/10 allocation arrangement with respect to the investment income applies only to the first $10,000 of interest income from the tax-exempt bonds and the first $10,000 of dividend income from the corporate stock, and only to the first taxable year of the partnership. There is a strong likelihood at the time the 90/10 allocation of the investment income became part of the partnership agreement that in the first taxable year of the partnership, the partnership will earn more than $10,000 of tax-exempt interest and more than $10,000 of taxable dividends. The allocations of tax-exempt interest and taxable dividends provided in the partnership agreement have economic effect, but under the test contained in paragraph (b)(2)(iii)(*b*) of this section, such economic effect is not substantial for the same reasons stated in (i) (but applied to the 1 taxable year, rather than to a 3-year period). If in fact the partnership realizes at least $10,000 of tax-exempt interest and at least $10,000 of taxable dividends in such year, the allocations of such interest income and dividend income will be reallocated equally between M and N under paragraph (b)(3) of this section. If not, the tax-exempt interest and taxable dividends will be reallocated between M and N in proportion to the net increases in their capital accounts due to the allocations of such items under the partnership agreement.

(iii) Assume the same facts as in (ii) except that at the time the 90/10 allocation of investment income becomes part of the partnership agreement, there is not a strong likelihood that (1) the partnership will earn $10,000 or more of tax-exempt interest and $10,000 or more of taxable dividends in the partnership's first taxable year, and (2) the amount of tax-exempt interest and taxable dividends earned during such year will be substantially the same. Under these facts the economic effect of the allocations generally will be substantial. (Additional facts may exist in certain cases, however, so that the allocation is insubstantial under the general rules of paragraph (b)(2)(iii). See example (5) above.)

Example (8). (i) O and P are equal partners in the OP general partnership. The partnership, O, and P have calendar taxable years. Partner O has a net operating loss carryover from another venture that is due to expire at the end of the partnership's second taxable year. Otherwise, both partners expect to be in the 50 percent marginal tax bracket in the next several taxable years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The partnership agreement is amended (at the beginning of the partnership's second taxable year) to allocate all the partnership net taxable income for that year to O. Future partnership net taxable loss is to be allocated to O, and future partnership net taxable income to P, until the allocation of income to O in the partnership's second taxable year is offset. It is further agreed orally that in the event the partnership is liquidated prior to completion of such offset, O's capital account will be

adjusted downward to the extent of one-half of the allocations of income to O in the partnership's second taxable year that have not been offset by other allocations, P's capital account will be adjusted upward by a like amount, and liquidation proceeds will be distributed in accordance with the partners' adjusted capital account balances. As a result of this oral amendment, all allocations of partnership net taxable income and net taxable loss made pursuant to the amendment executed at the beginning of the partnership's second taxable year lack economic effect and will be disregarded. Under the partnership agreement other allocations are made equally to O and P, and O and P will share equally in liquidation proceeds, indicating that the partners' interests in the partnership are equal. Thus, the disregarded allocations will be reallocated equally between the partners under paragraph (b)(3) of this section.

(ii) Assume the same facts as in (i) except that there is no agreement that O's and P's capital accounts will be adjusted downward and upward, respectively, to the extent of one-half of the partnership net taxable income allocated to O in the partnership's second taxable year that is not offset subsequently by other allocations. The income of the partnership is generated primarily by fixed interest payments received with respect to highly rated corporate bonds, which are expected to produce sufficient net taxable income prior to the end of the partnership's seventh taxable year to offset in large part the net taxable income to be allocated to O in the partnership's second taxable year. Thus, at the time the allocations are made part of the partnership agreement, there is a strong likelihood that the allocation of net taxable income to be made to O in the second taxable year will be offset in large part within 5 taxable years thereafter. These allocations have economic effect. However, the economic effect of the allocation of partnership net taxable income to O in the partnership's second taxable year, as well as the offsetting allocations to P, is not substantial under the test contained in paragraph (b)(2)(iii)(*c*) of this section because there is a strong likelihood that the net increases or decreases in O's and P's capital accounts will be the same at the end of the partnership's seventh taxable year with such allocations as they would have been in the absence of such allocations, and the total taxes of O and P for the taxable years to which such allocations relate will be reduced as a result of such allocations. If in fact the partnership, in its taxable years 3 through 7, realizes sufficient net taxable income to offset the amount allocated to O in the second taxable year, the allocations provided in the partnership agreement will be reallocated equally between the partners under paragraph (b)(3) of this section.

Example (9). Q and R form a limited partnership with contributions of $20,000 and $180,000, respectively. Q, the limited partner, is a corporation that has $2,000,000 of net operating loss carryforwards that will not expire for 8 years. Q does not expect to have sufficient income (apart from the income of the partnership) to absorb any of such net operating loss carryforwards. R, the general partner, is a corporation that expects to be in the 46 percent marginal tax bracket for several years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The partnership's cash, together with the proceeds of an $800,000 loan, are invested in assets that are expected to produce taxable income and cash flow (before debt service) of approximately $150,000 a year for the first 8 years of the partnership's operations. In addition, it is expected that the partnership's total taxable income in its first 8 taxable years will not exceed $2,000,000. The partnership's $150,000 of cash flow in each of its first 8 years will be used to retire the $800,000 loan. The partnership agreement provides that partnership net taxable income will be allocated 90 percent to Q and 10 percent to R in the first through eighth partnership taxable years, and 90 percent to R and 10 percent to Q in all subsequent partnership taxable years. Net taxable loss will be allocated 90 percent to R and 10 percent to Q in all partnership taxable years. All distributions of cash from the partnership to partners (other than the priority distributions to Q described below) will be made 90 percent to R and 10 percent to Q. At the end of the partnership's eighth taxable year, the amount of Q's capital account in excess of one-ninth of R's capital account on such date will be designated as Q's "excess capital account." Beginning in the ninth taxable year of the partnership, the undistributed portion of Q's excess capital account will begin to bear interest (which will be paid and deducted under section 707(c) at a rate of interest below the rate that the partnership can borrow from commercial lenders, and over the next several years (following the eight year) the partnership will make priority cash distributions to Q in prearranged percentages of Q's excess capital account designed to amortize Q's excess capital account and the interest thereon over a prearranged period. In addition, the partnership's agreement prevents Q from causing his interest in the partnership from being liquidated (and thereby receiving the balance in his capital account) without R's consent until Q's excess capital account has been eliminated. The below market rate of interest and the period over which the amortization will take place are prescribed such that, as of the end of the partnership's eighth taxable year, the present value of Q's right to receive such priority distributions is approximately 46 percent of the amount of Q's excess capital account as of such date. However, because the partnership's income for its first 8 taxable years will be realized approximately ratably over that period, the present value of Q's right to receive the priority distributions with respect to its excess capital account is, as of the date the partnership agreement is entered into, less than the present value of the additional Federal income taxes for which R would be liable if, during the partnership's first 8 taxable years, all partnership income were to be allocated 90 percent to R and 10 to Q. The allocations of partnership taxable income to Q and R in the first through eighth partnership taxable years have economic effect. However, such economic effect is not substantial under the general rules set forth in paragraph (b)(2)(iii) of this section. This is true because R may enhance his after-tax economic consequences, on a present value basis, as a result of the allocations to Q of 90 percent of partnership's income during taxable years 1 through 8, and there is a strong likelihood that neither R nor Q will substantially diminish its after-tax economic consequences, on a present value basis, as a result of such allocation. Accordingly, partnership taxable income for partnership taxable years 1 through 8 will be reallocated in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section.

Example (10). (i) S and T form a general partnership to operate a travel agency. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The partnership agreement provides that T, a resident of a foreign country, will be allocated 90 percent, and S 10 percent, of the income, gain, loss, and deduction derived from operations conducted by T within his country, and all remaining income, gain, loss, and deduction will be allocated equally. The amount of such income, gain, loss, or deduction cannot be predicted with any reasonable certainty. The allocations provided by the partnership agreement have substantial economic effect.

(ii) Assume the same facts as in (i) except that the partnership agreement provides that all income, gain, loss, and deduction of the partnership will be shared equally, but that T will be allocated all income, gain, loss, and deduction derived from operations conducted by him within his country as a part of his equal share of partnership income, gain, loss, and deduction, upon to the amount of such share. Assume the total tax liability of S and T for each year to which these allocations relate will be reduced as a result of such allocation. These allocations have economic effect. However, such economic effect is not substantial under the test stated in paragraph (b)(2)(iii)(*b*) of this section because, at the time the allocations became part of the partnership agreement, there is a strong likelihood that the net increases and decreases to S's and T's capital accounts will be the same at the end of each partnership taxable year with such allocations as they would have been in the absence of such

allocations, and that the total tax liability of S and T for each year to which such allocations relate will be reduced as a result of such allocations. Thus, all items of partnership income, gain, loss, and income, gain, loss, and deduction will be reallocated equally between S and T under paragraph (b)(3) of this section.

Example (11). (i) U and V share equally all income, gain, loss, and deduction of the UV general partnership, as well as all non-liquidating distributions made by the partnership. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore such deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The agreement further provides that the partners will be allocated equal shares of any section 705(a)(2)(B) expenditures of the partnership. In the partnership's first taxable year, it pays qualified first-year wages of $6,000 and is entitled to a $3,000 targeted jobs tax credit under sections 44B and 51 of the Code. Under section 280C the partnership must reduce its deduction for wages paid by the $3,000 credit claimed (which amount constitutes a section 705(a)(2)(B) expenditure). The partnership agreement allocates the credit to U. Although the allocations of wage deductions and section 705(a)(2)(B) expenditures have substantial economic effect, the allocation of tax credit cannot have economic effect since it cannot properly be reflected in the partners' capital accounts. Furthermore, the allocation is not in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(ii) of this section. Under that rule, since the expenses that gave rise to the credit are shared equally by the partners, the credit will be shared equally between U and V.

(ii) Assume the same facts as in (i) and that at the beginning of the partnership's second taxable year, the partnership agreement is amended to allocate to U all wage expenses incurred in that year (including wage expenses that constitute section 705(a)(2)(B) expenditures) whether or not such wages qualify for the credit. The partnership agreement contains no offsetting allocations. That taxable year the partnership pays $8,000 in total wages to its employees. Assume that the partnership has operating income equal to its operating expenses (exclusive of expenses for wages). Assume further that $6,000 of the $8,000 wage expense constitutes qualified first-year wages. U is allocated the $3,000 deduction and the $3,000 section 705(a)(2)(B) expenditure attributable to the $6,000 of qualified first-year wages, as well as the deduction for the other $2,000 in wage expenses. The allocations of wage deductions and section 705(a)(2)(B) expenditures have substantial economic effect. Furthermore, since the wage credit is allocated in the same proportion as the expenses that gave rise to the credit, and the allocation of those expenses has substantial economic effect, the allocation of such credit to U is in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(ii) of this section and is recognized thereunder.

Example (12). (i) W and X form a general partnership for the purpose of mining iron ore. W makes an initial contribution of $75,000, and X makes an initial contribution of $25,000. The partnership agreement provides that non-liquidating distributions will be made 75 percent to W and 25 percent to X, and that all items of income, gain, loss, and deduction will be allocated 75 percent to W and 25 percent to X, except that all percentage depletion deductions will be allocated to W. The agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraphs (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore such deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). Assume that the adjusted tax basis of the partnership's only depletable iron ore property is $1,000 and that the percentage depletion deduction for the taxable year with respect to such property is $1,500. The allocation of partnership income, gain, loss, and deduction (excluding the percentage depletion deduction) as well as the allocation of $1,000 of the percentage depletion deduction have substantial economic effect. The allocation to W of the remaining $500 of the percentage depletion deduction, representing the excess of percentage depletion over adjusted tax basis of the iron ore property, cannot have economic effect since such amount cannot properly be reflected in the partners' capital accounts. Furthermore, the allocation to W of that $500 excess percentage depletion deduction is not in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(iii) of this section, under which such $500 excess depletion deduction (and all further percentage depletion deductions from the mine) will be reallocated 75 percent to W and 25 percent to X.

(ii) Assume the same facts as in (i) except that the partnership agreement provides that all percentage depletion deductions of the partnership will be allocated 75 percent to W and 25 percent to X. Once again, the allocation of partnership income, gain, loss, and deduction (excluding the percentage depletion deduction) as well as the allocation of $1,000 of the percentage depletion deduction have substantial economic effect. Furthermore, since the $500 portion of the percentage depletion deduction that exceeds the adjusted basis of such iron ore property is allocated in the same manner as valid allocations of the gross income from such property during the taxable year (*i.e.*, 75 percent to W and 25 percent to X), the allocation of the $500 excess percentage depletion contained in the partnership agreement is in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(iii) of this section.

Example (13). (i) Y and Z form a brokerage general partnership for the purpose of investing and trading in marketable securities. Y contributes cash of $10,000, and Z contributes securities of P corporation, which have an adjusted basis of $3,000 and a fair market value of $10,000. The partnership would not be an investment company under section 351(e) if it were incorporated. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The initial capital accounts of Y and Z are fixed at $10,000 each. The agreement further provides that all partnership distributions, income, gain, loss, deduction, and credit will be shared equally between Y and Z, except that the taxable gain attributable to the precontribution appreciation in the value of the securities of P corporation will be allocated to Z in accordance with section 704(c). During the partnership's first taxable year, it sells the securities of P corporation for $12,000, resulting in a $2,000 book gain ($12,000 less $10,000 book value) and a $9,000 taxable gain ($12,000 less $3,000 adjusted tax basis). The partnership has no other income, gain, loss, or deductions for the taxable year. The gain from the sale of the securities is allocated as follows:

	Y		Z	
	Tax	Book	Tax	Book
Capital account upon formation	$10,000	$10,000	$3,000	$10,000
Plus: gain	1,000	1,000	8,000	1,000
Capital account at end of year 1	$11,000	$11,000	$11,000	$11,000

The allocation of the $2,000 book gain, $1,000 each to Y and Z, has substantial economic effect. Furthermore, under section 704(c) the partners' distributive shares of the $9,000 taxable gain are $1,000 to Y and $8,000 to Z.

(ii) Assume the same facts as in (i) and that at the beginning of the partnership's second taxable year, it invests its $22,000 of cash in securities of G Corp. The G Corp. securities increase in value to $40,000, at which time Y sells 50 percent of his partnership interest (*i.e.*, a 25 percent interest in the partnership) to LK for $10,000. The partnership does not have a section 754 election in effect for the partnership taxable year during which such sale occurs. In accordance with paragraph (b)(2)(iv)(*l*) of this section, the partnership agreement provides that LK inherits 50 percent of Y's $11,000 capital account balance. Thus, following the sale, LK and Y each have a capital account of $5,500, and Z's

capital account remains at $11,000. Prior to the end of the partnership's second taxable year, the securities are sold for their $40,000 fair market value, resulting in an $18,000 taxable gain ($40,000 less $22,000 adjusted tax basis). The partnership has no other income, gain, loss, or deduction in such taxable year. Under the partnership agreement the $18,000 taxable gain is allocated as follows:

	Y	Z	LK
Capital account before sale of securities	$5,500	$11,000	$5,500
Plus: gain	4,500	9,000	4,500
Capital account at end of year 2	$10,000	$20,000	$10,000

The allocation of the $18,000 taxable gain has substantial economic effect.

(iii) Assume the same facts as in (ii) except that the partnership has a section 754 election in effect for the partnership taxable year during which Y sells 50 percent of his interest to LK. Accordingly, under § 1.743–1 there is a $4,500 basis increase to the G Corp. securities with respect to LK. Notwithstanding this basis adjustment, as a result of the sale of the G Corp. securities, LK's capital account is, as in (ii), increased by $4,500. The fact that LK recognizes no taxable gain from such sale (due to his $4,500 section 743 basis adjustment) is irrelevant for capital accounting purposes since, in accordance with paragraph (b)(2)(iv)(*m*)(*2*) of this section, that basis adjustment is disregarded in the maintenance and computation of the partners' capital accounts.

(iv) Assume the same facts as in (iii) except that immediately following Y's sale of 50 percent of this interest to LK, the G Corp. securities decrease in value to $32,000 and are sold. The $10,000 taxable gain ($32,000 less $22,000 adjusted tax basis) is allocated as follows:

	Y	Z	LK
Capital account before sale of securities	$5,500	$11,000	$5,500
Plus: gain	2,500	5,000	2,500
Capital account at end of the year 2	$8,000	$16,000	$8,000

The fact that LK recongizes a $2,000 taxable loss from the sale of the G Corp. securities (due to his $4,500 section 743 basis adjustment) is irrelevant for capital accounting purposes since, in accordance with paragraph (b)(2)(iv)(*m*)(*2*) of this section, that basis adjustment is disregarded in the maintenance and computation of the partners' capital accounts.

(v) Assume the same facts as in (ii) except that Y sells 100 percent of his partnership interest (*i.e.*, a 50 percent interest in the partnership) to LK for $20,000. Under section 708(b)(1)(B) the partnership terminates. Under paragraph (b)(1)(iv) of § 1.708–1, there is a constructive liquidation of the partnership. Immediately preceding the constructive liquidation, the capital accounts of Z and LK equal $11,000 each (LK having inherited Y's $11,000 capital account). In accordance with paragraph (b)(2)(iv)(*e*) of this section, the partnership agreement provides that the partners' capital accounts are adjusted to reflect how unrealized taxable gain would have been allocated if the securities had been sold for their $40,000 fair market value. Accordingly, the $18,000 of unrealized gain ($40,000 less $22,000 adjusted tax basis is credited to the partners' capital accounts as follows:

	Z	LK
Capital account following sale	$11,000	$11,000
Deemed sale adjustment	9,000	9,000
Capital account before constructive liquidation	$20,000	$20,000

Constructive liquidating distributions of the securities are made with reference to their $40,000 fair market value. Under section 732(b) the adjusted tax basis of the G Corp. securities constructively distributed to Z is equal to the $11,000 adjusted tax basis of Z's partnership interest before the constructive liquidation, and the adjusted tax basis of the G Corp. securities constructively distributed to Z is equal to the $20,000 adjusted tax basis of LK's partnership interest partnership before the constructive liquidation. Under paragraph (b)(1)(iv) of § 1.708–1, the partners then are treated as contributing to a new partnership the property constructively distributed to them in connection the partnership's termination. In accordance with paragraph (b)(2)(iv)(*d*) of this section, the capital accounts of Z and LK in the reconstituted partnership are stated at $20,000 each (*i.e.*, the fair market value of the property constructively contributed to the new partnership by each of the partners).

Example (14). (i) MC and RW form a general partnership to which each contributes $10,000. The $20,000 is invested in securities of Ventureco (which are not readily tradable on an established securities market). In each of the partnership's taxable years, it recognizes operating income equal to its operating deductions (excluding gain or loss from the sale of securities). The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section). Assume that the Ventureco securities subsequently appreciate in value to $50,000. At that time SK makes a $25,000 cash contribution to the partnership (thereby acquiring a one-third interest in the partnership), and the $25,000 is placed in a bank account. Upon SK's admission to the partnership, the capital accounts of MC and RW (which were $10,000 each prior to SK's admission) are, in accordance with paragraph (b)(2)(iv)(*f*) of this section, adjusted upward (to $25,000 each) to reflect their shares of the unrealized appreciation in the Ventureco securities that occurred before SK was admitted to the partnership. Immediately after SK's admission to the partnership, the securities are sold for their $50,000 fair market value, resulting in taxable gain of $30,000 ($50,000 less $20,000 adjusted tax basis) and no book gain or loss. An allocation of the $30,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that the $30,000 taxable gain will, in accordance with section 704(c) principles, be shared $15,000 to MC and $15,000 to RW, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account following SK's admission	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: gain	15,000	0	15,000	0	0	0
Capital account following sale	$25,000	$25,000	$25,000	$25,000	$25,000	$25,000

(ii) Assume the same facts as (i), except that after SK's admission to the partnership, the Ventureco securities appreciate in value to $74,000 and are sold, resulting in taxable gain of $54,000 ($74,000 less $20,000 adjusted tax basis) and book gain of $24,000 ($74,000 less $50,000 book value). Under the partnership agreement the $24,000 book gain (the appreciation in value occurring after SK became a partner) is allocated equally among MC, RW, and SK, and such allocations have substantial economic effect. An allocation of the $54,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that the taxable gain will, in accordance with section 704(c) principles, be shared $23,000 to MC $23,000 to RW, and $8,000 to SK, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account following SK's admission	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: gain	23,000	8,000	23,000	8,000	8,000	8,000
Capital account following sale	$33,000	$33,000	$33,000	$33,000	$33,000	$33,000

(iii) Assume the same facts as (i) except that after SK's admission to the partnership, the Ventureco securities depreciate in value to $44,000 and are sold, resulting in taxable gain of $24,000 ($44,000 less $20,000 adjusted tax basis) and a book loss of $6,000 ($50,000 book value less $44,000). Under the partnership agreement the $6,000 book loss is allocated equally among MC, RW, and SK, and such allocations have substantial economic effect. An allocation of the $24,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that the $24,000 taxable gain will, in accordance with section 704(c) principles, be shared equally between MC and RW, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account following SK's admission	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: gain	12,000	0	12,000	0	0	0
Less: loss	0	(2,000)	0	(2,000)	0	(2,000)
Capital account following sale	$22,000	$23,000	$22,000	$23,000	$25,000	$25,000

That SK bears an economic loss of $2,000 without a corresponding taxable loss is attributable entirely to the "ceiling rule." See paragraph (c)(2) of § 1.704–1.

(iv) Assume the same facts as in (ii) except that upon the admission of SK the capital accounts of MC and RW are not each adjusted upward from $10,000 to $25,000 to reflect the appreciation in the partnership's securities that occurred before SK was admitted to the partnership. Rather, upon SK's admission to the partnership, the partnership agreement is amended to provide that the first $30,000 of taxable gain upon the sale of such securities will be allocated equally between MC and RW, and that all other income, gain, loss, and deduction will be allocated equally between MC, RW, and SK. When the securities are sold for $74,000, the $54,000 of taxable gain is so allocated. These allocations of taxable gain have substantial economic effect. (If the agreement instead provides for all taxable gain (including the $30,000 taxable gain attributable to the appreciation in the securities prior to SK's admission to the partnership) to be allocated equally between MC, RW, and SK, the partners should consider whether, and to what extent, the provisions of paragraphs (b)(1) (iii) and (iv) of this section are applicable.)

(v) Assume the same facts as in (iv) except that instead of selling the securities, the partnership makes a distribution of the securities (which have a fair market value of $74,000). Assume the distribution does not give rise to a transaction described in section 707(a)(2)(B). In accordance with paragraph (b)(2)(iv)(*e*) of this section, the partners' capital accounts are adjusted immediately prior to the distribution to reflect how taxable gain ($54,000) would have been allocated had the securities been sold for their $74,000 fair market value, and capital account adjustments in respect of the distribution of the securities are made with reference to the $74,000 "booked-up" fair market value.

	MC	RW	SK
Capital account before adjustment	$10,000	$10,000	$25,000
Deemed sale adjustment	23,000	23,000	8,000
Less: distribution	(24,667)	(24,667)	(24,667)
Capital account after distribution	$8,333	$8,333	$8,333

(vi) Assume the same facts as in (i) except that the partnership does not sell the Ventureco securities. During the next 3 years the fair market value of the Ventureco securities remains at $50,000, and the partnership engages in no other investment activities. Thus, at the end of that period the balance sheet of the partnership and the partners' capital accounts are the same as they were at the beginning of such period. At the end of the 3 years, MC's interest in the partnership is liquidated for the $25,000 cash held by the partnership. Assume the distributions does not give rise to a transaction described in section 707(a)(2)(B). Assume further that the partnership has a section 754 election in effect for the taxable year during which such liquidation occurs. Under sections 734(b) and 755 the partnership increases the basis of the Ventureco securities by the $15,000 basis adjustment (the excess of $25,000 over the $10,000 adjusted tax basis of MC's partnership interest).

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account before distribution	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: basis adjustment	15,000	0	0	0	0	0
Less: distribution	(25,000)	(25,000)	0	0	0	0
Capital account account after liquidation	0	0	$10,000	$25,000	$25,000	$25,000

(vii) Assume the same facts as in (vi) except that the partnership has no section 754 election in effect for the taxable year during which such liquidation occurs.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account before distribution	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Less: distribution	(25,000)	(25,000)	0	0	0	0
Capital account after liquidation	($15,000)	0	$10,000	$25,000	$25,000	$25,000

Following the liquidation of MC's interest in the partnership, the Ventureco securities are sold for their $50,000 fair market value, resulting in no book gain or loss but a $30,000 taxable gain. An allocation of this $30,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that $15,000 of such taxable gain will, in accordance with section 704(c) principles, be included in RW's distributive share, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section. The remaining $15,000 of such gain will, under paragraph (b)(3) of this section, be shared equally between RW and SK.

Example (15). (i) JB and DK form a limited partnership for the purpose of purchasing residential real estate to lease. JB, the limited partner, contributes $13,500, and DK, the general partner, contributes $1,500. The partnership, which uses the cash receipts and disbursements method of accounting, purchases a building for $100,000 (on leased land), incurring a recourse mortgage of $85,000 that requires the payment of interest only for a period of 3 years. The partnership agreement provides that partnership net taxable income and loss will be allocated 90 percent to JB and 10 percent to DK, the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distribu-

tions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), and JB is not required to restore any deficit balance in his capital account, but DK is so required. The partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section). As of the end of each of the partnership's first 3 taxable years, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in JB's capital account. In the partnership's first taxable year, it has rental income of $10,000, operating expenses of $2,000, interest expense of $8,000, and cost recovery deductions of $12,000. Under the partnership agreement JB and DK are allocated $10,800 and $1,200, respectively, of the $12,000 net taxable loss incurred in the partnership's first taxable year.

	JB	DK
Capital account upon formation	$13,500	$1,500
Less: year 1 net loss	(10,800)	(1,200)
Capital account at end of year 1	$2,700	$300

The alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section is satisfied as of the end of the partnership's first taxable year. Thus, the allocation made in the partnership's first taxable year has economic effect.

(ii) Assume the same facts as in (i) and that in the partnership's second taxable year it again has rental income of $10,000, operating expenses of $2,000, interest expense of $8,000, and cost recovery deductions of $12,000. Under the partnership agreement JB and DK are allocated $10,800 and $1,200, respectively, of the $12,000 net taxable loss incurred in the partnership's second taxable year.

	JB	JB
Capital account at beginning of year 1	$2,700	$300
Less: year 2 net loss	(10,800)	(1,200)
Capital account at end of year 2	($8,100)	($900)

Only $2,700 of the $10,800 net taxable loss allocated to JB satisfies the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section as of the end of the partnership's second taxable year. The allocation of such $2,700 net taxable loss to JB (consisting of $2,250 of rental income, $450 of operating expenses, $1,800 of interest expense, and $2,700 of cost recovery deductions) has economic effect. The remaining $8,100 of net taxable loss allocated by the partnership agreement to JB must be reallocated in accordance with the partners' interests in the partnership. Under paragraph (b)(3)(iii) of this section, the determination of the partners' interests in the remaining $8,100 net taxable loss is made by comparing how distributions (and contributions) would be made if the partnership sold its property at its adjusted tax basis and liquidated immediately following the end of the partnership's first taxable year with the results of such a sale and liquidation immediately following the end of the partnership's second taxable year. If the partnership's real property were sold for its $88,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's first taxable year, the $88,000 sales proceeds would be used to repay the $85,000 note, and there would be $3,000 remaining in the partnership, which would be used to make liquidating distributions to DK and JB of $300 and $2,700, respectively. If such property were sold for its $76,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's second taxable year, DK would be required to contribute $9,000 to the partnership in order for the partnership to repay the $85,000 note, and there would be no assets remaining in the partnership to distribute. A comparison of these outcomes indicates that JB bore $2,700 and DK $9,300 of the economic burden that corresponds to the $12,000 net taxable loss. Thus, in addition to the $1,200 net taxable loss allocated to DK under the partnership agreement, $8,100 of net taxable loss will be reallocated to DK under paragraph (b)(3)(iii) of this section. Similarly, for subsequent taxable years, absent an increase in JB's capital account, all net taxable loss allocated to JB under the partnership agreement will be reallocated to DK.

(iii) Assume the same facts as in (ii) and that in the partnership's third taxable year there is rental income of $35,000, operating expenses of $2,000, interest expense of $8,000, and cost recovery deductions of $10,000. The capital accounts of the partners maintained on the books of the partnership do not take into account the reallocation to DK of the $8,100 net taxable loss in the partnership's second taxable year. Thus, an allocation of the $15,000 net taxable income $13,500 to JB and $1,500 to DK (as dictated by the partnership agreement and as reflected in the capital accounts of the partners) does not have economic effect. The partners' interests in the partnership with respect to such $15,000 taxable gain again is made in the manner described in paragraph (b) (3) (iii) of this section. If the partnership's real property were sold for its $76,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's second taxable year, DK would be required to contribute $9,000 to the partnership in order for the partnership to repay the $85,000 note, and there would be no assets remaining to distribute. If such property were sold for its $66,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's third taxable year, the $91,000 ($66,000 sales proceeds plus $25,000 cash on hand) would be used to repay the $85,000 note and there would be $6,000 remaining in the partnership, which would be used to make liquidating distributions to DK and JB of $600 and $5,400, respectively. Accordingly, under paragraph (b) (3) (iii) of this section the $15,000 net taxable income in the partnership's third taxable year will be reallocated $9,600 to DK (minus $9,000 at end of the second taxable year to positive $600 at end of the third taxable year) and $5,400 to JB (zero at end of the second taxable year to positive $5,400 at end of the third taxable year).

Example (16). (i) KG and WN form a limited partnership for the purpose of investing in improved real estate. KG, the general partner, contributes $10,000 to the partnership, and WN, the limited partner, contributes $990,000 to the partnership. The $1,000,000 is used to purchase an apartment building on leased land. The partnership agreement provides that (1) the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section; (2) cash will be distributed first to WN until such time as he has received the amount of his original capital contribution ($990,000), next to KG until such time as he has received the amount of his original capital contribution ($10,000), and thereafter equally between WN and KG; (3) partnership net taxable income will be allocated 99 percent to WN 1 percent to KG until the cumulative net taxable income allocated for all taxable years is equal to the cumulative net taxable loss previously allocated to the partners, and thereafter equally between WN and KG; (4) partnership net taxable loss will be allocated 99 percent to WN and 1 percent to KG, unless net taxable income has previously been allocated equally between WN and KG, in which case such net taxable loss first will be allocated equally until the cumulative net taxable loss allocated for all taxable years is equal to the cummulative net taxable income previously allocated to the partners; and (5) upon liquidation, WN is not required to restore any deficit balance in his capital account, but KG is so required. Since distributions in liquidation are not required to be made in accordance with the partners' positive capital account balances, and since WN is not required, upon the liquidation of his interest, to restore the deficit balance in his capital account to the partnership, the allocations provided by the partnership agreement do not have economic effect and will be reallocated in accordance with the partners' interests in the partnership under paragraph (b) (3) of this section.

(ii) Assume the same facts as in (i) except that the partnership agreement further provides that distributions in liquidation of the partnership (or any partner's interest) are to be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section). Assume further that the partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section) and that, as of the end of each partnership taxable year, the items described in paragraphs (b)(2)(iii)(*d*) (*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in WN's capital account. The allocations provided by the partnership agreement have economic effect.

Example (17). FG and RP form a partnership with FG contributing cash of $100 and RP contributing property, with 2 years of cost recovery deductions remaining, that has

an adjusted tax basis of $80 and a fair market value of $100. The partnership, FG, and RP have calendar taxable years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, liquidation proceeds will be made in accordance with capital account balances, and each partner is liable to restore the deficit balance in his capital account to the partnership upon liquidation of his interest (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). FG expects to be in a substantially higher tax bracket than RP in the partnership's first taxable year. In the partnership's second taxable year, and in subsequent taxable years, it is expected that both will be in approximately equivalent tax brackets. The partnership agreement allocates all items equally except that all $50 of book depreciation is allocated to FG in the partnership's first taxable year and all $50 of book depreciation is allocated to RP in the partnership's second taxable year. If the allocation to FG of all book depreciation in the partnership's first taxable year is respected, FG would be entitled under section 704(c) to the entire cost recovery deduction ($40) for such year. Likewise, if the allocation to RP of all the book depreciation in the partnership's second taxable year is respected, RP would be entitled under section 704(c) to the entire cost recovery deduction ($40) for such year. The allocation of book depreciation to FG and RP in the partnership's first 2 taxable years has economic effect within the meaning of paragraph (b)(2)(ii) of this section. However, the economic effect of these allocations is not substantial under the test described in paragraph (b)(2)(iii)(*c*) of this section since there is a strong likelihood at the time such allocations became part of the partnership agreement that at the end of the 2-year period to which such allocations relate, the net increases and decreases to FG's and RP's capital accounts will be the same with such allocations as they would have been in the absence of such allocation, and the total tax liability of FG and RP for the taxable years to which the section 704(c) determinations relate would be reduced as a result of the allocations of book depreciation. As a result the allocations of book depreciation in the partnership agreement will be disregarded. FG and RP will be allocated such book depreciation in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. Under these facts the book depreciation deductions will be reallocated equally between the partners, and section 704(c) will be applied with reference to such reallocation of book depreciation.

Example (18). (i) WM and JL form a general partnership by each contributing $300,000 thereto. The partnership uses the $600,000 to purchase an item of tangible personal property, which it leases out. The partnership elects under section 48 (q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such property. The partnership agreement provides that (1) the partners' capital account will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, (2) distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), (3) any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section), (4) all income, gain, loss, and deduction of the partnership will be allocated equally between the partners, and (5) all non-liquidating distributions of the partnership will be made equally between the partners. Assume that in each of the partnership's taxable years, it recognizes operating income equal to its operating deductions (excluding cost recovery and depreciation deductions and gain or loss on the sale of its property). During its first 2 taxable years, the partnership has an additional $200,000 cost recovery deduction in each year. Pursuant to the partnership agreement these items are allocated equally between WM and JL.

	WM	*JL*
Capital account upon formation	$300,000	$300,000
Less: net loss for years 1 and 2	(*200,000*)	(*200,000*)
Capital account at end of year 2	$100,000	$100,000

The allocations made in the partnerhip's first 2 taxable years have substantial economic effect.

(ii) Assume the same facts as in (i) and that MK is admitted to the partnership at the beginning of the partnership's third taxable year. At the time of his admission, the fair market value of the partnership property is $600,000. MK contributes $300,000 to the partnership in exchange for an equal one-third interest in the partnership, and, as permitted under paragraph (b)(2)(iv)(*g*), the capital accounts of WM and JL are adjusted upward to $300,000 each to reflect the fair market value of partnership property. In addition, the partnership agreement is modified to provide that depreciation and gain or loss, as computed for tax purposes, with respect to the partnership property that appreciated prior to MK's admission will be shared among the partners in a manner that takes account of the variation between such property's $200,000 adjusted tax basis and its $600,000 book value in accordance with paragraph (b)(2)(iv)(*f*) and the special rule contained in paragraph (b)(4)(i) of this section. Depreciation and gain or loss, as computed for book purposes, with respct to such property will be allocated equally among the partners and, in accordance with paragraph (b)(2)(iv)(*g*) of this section, will be reflected in the partner's capital accounts, as will all other partnership income, gain, loss, and deduction. Since the requirements of (b)(2)(iv)(*g*) of this section are satisfied, the capital accounts of the partners (as adjusted) continue to be maintained in accordance with paragraph (B)(2)(iv) of this section.

(ii) Assume the same facts as in (iii) and that immediately after MK's admission to the partnership, the partnership property is sold for $600,000, resulting in a taxable gain of $400,000 ($600,000 less $200,000 adjusted tax basis) and no book gain or loss, and the partnership is liquidated. An allocation of the $400,000 taxable gain cannot have economic effect because such gain cannot properly be reflected in the partners' book capital accounts. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $400,000 taxable gain will, in accordance with section 704(c) principles, be shared equally between WN and JL.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Plus: gain	200,000	0	200,000	0	0	0
Capital account before liquidation	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000

The $900,000 of partnership cash ($600,000 sales proceeds plus $300,000 contributed by MK) is distributed equally among WM, JL, and MK in accordance with their adjusted positive capital account balances, each of which is $300,000.

(iv) Assume the same facts as in (iii) except that prior to liquidation the property appreciates and is sold for $900,000, resulting in a taxable gain of $700,000 ($900,000 less $200,000 adjusted tax basis) and a book gain of $300,000 ($900,000 less $600,000 book value). Under the partnership agreement the $300,000 of book gain is allocated equally among the partners, and such allocation has substantial economic effect.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Plus: gain	300,000	100,000	300,000	100,000	100,000	100,000
Capital account before liquidation	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000

Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the

$700,000 taxable gain is, in accordance with section 704(c) principles, shared $300,000 to JL, $300,000 to WM, and $100,000 to MK. This ensures that (1) WM and JL share equally the $400,000 taxable gain that is attributable to appreciation in the property that occurred prior to MK's admission to the partnership in the same manner as it was reflected in their capital accounts upon MK's admission, and (2) WM, JL, and MK share equally the additional $300,000 taxable gain in the same manner as they shared the $300,000 book gain.

(v) Assume the same facts as in (ii) except that shortly after MK's admission the property depreciates and is sold for $450,000, resulting in a taxable gain of $250,000 ($450,000 less $200,000 adjusted tax basis) and a book loss of $150,000 (450,000 less $600,000 book value). Under the partnership agreement these items are allocated as follow:

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Plus: gain	125,000	0	125,000	0	0	0
Less: loss	0	(50,000)	0	(50,000)	0	(50,000)
Capital account before liquidation	$225,000	$250,000	$225,000	$250,000	$300,000	$250,000

The $150,000 book loss is allocated equally among the partners, and such allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $250,000 taxable gain is, in accordance with section 704(c) principles, shared equally between WM and JL. The fact that MK bears an economic loss of $50,000 without a corresponding taxable loss is attributable entirely to the "ceiling rule." See paragraph (c)(2) of § 1.704–1.

(vi) Assume the same facts as in (ii) except that the property depreciates and is sold for $170,000, resulting in a $30,000 taxable loss ($200,000 adjusted tax basis less $170,000) and a book loss of $430,000 ($600,000 book value less $170,000). The book loss of $430,000 is allocated equally among the partners ($143,333 each) and has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the entire $30,000 taxable loss is, in accordance with section 704(c) principles, included in MK's distributive share.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Less Loss	0	(143,333)	0	(143,333)	(30,000)	(143,333)
Capital account before liquidation	$100,000	$156,667	$100,000	$156,667	$270,000	$156,667

(vii) Assume the same facts as in (ii) and that during the partnership's third taxable year, the partnership has an additional $100,000 cost recovery deduction and $300,000 book depreciation deduction attributable to the property purchased by the partnership in its first taxable year. The $300,000 book depreciation deduction is allocated equally among the partners, and that allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $100,000 cost recovery deduction for the partnership's third taxable year is, in accordance with section 704(c) principles, included in MK's distributive share. This is because under those principles MK must include the cost recovery deduction for such property in his distributive share up to the amount of the book depreciation deduction for such property properly allocated to him.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Less: recovery/depreciation deduction for year 3	0	(100,000)	0	(100,000)	(100,000)	(100,000)
Capital account at end of year 3	$100,000	$200,000	$100,000	$200,000	$200,000	$200,000

(viii) Assume the same facts as in (vii) except that upon MK's admission the partnership property has an adjusted tax basis of $220,000 (instead of $200,000), and thus the cost recovery deduction for the partnership's third taxable year is $110,000. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the excess $10,000 cost recovery deduction ($110,000 less $100,000 included in MK's distributive share) is, in accordance with section 704(c) principles, shared by WM and JL in proportion to their shares of book depreciation. Since their shares of book depreciation were equal, they each must include $5,000 of the cost recovery deduction in their distributive shares for the partnership's third taxable year.

(ix) Assume the same facts as in (vii) except that upon MK's admission the partnership agreement is amended to allocate the first $400,000 of book depreciation and loss on partnership property equally between WM and JL and the last $200,000 of such book depreciation and loss to MK. Assume such allocations have substantial economic effect. Pursuant to this amendment the $300,000 book depreciation deduction in the partnership's third taxable year is allocated equally between WM and JL. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $100,000 cost recovery deduction is, in accordance with section 704(c) principles, shared equally between WM and JL. In the partnership's fourth taxable year, it has a $60,000 cost recovery deduction and a $180,000 book depreciation deduction. Under the amendment described above, the $180,000 book depreciation deduction is allocated $50,000 to WM, $50,000 to JL, and $80,000 to MK. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $60,000 cost recovery deduction is, in accordance with section 704(c) principles, included entirely in MK's distributive share.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Less:						
(a) recovery/depreciation deduction for year 3	(50,000)	(150,000)	(50,000)	(150,000)	0	0
(b) recovery/depreciation deduction for year 4	0	(50,000)	0	(50,000)	(60,000)	(80,000)
Capital account at end of year 4	$50,000	$100,000	$50,000	$100,000	$240,000	$220,000

(x) Assume the same facts as in (vii) and that at the beginning of the partnership's third taxable year, the partnership purchases a second item of tangible personal property for $300,000 and elects under section 48(q) (4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such property. The partnership agreement is amended to allocate the first $150,000 of cost recovery deductions and loss from such property to WM and the next $150,000 of cost recovery deductions and loss from such property equally between JL and MK. Thus, in the partnership's third taxable year it has, in addition to the items specified in (vii), a cost recovery and book depreciation deduction of $100,000 attributable to the newly acquired property, which is allocated entirely to WM.

As in (vii), the allocation of the $300,000 book depreciation attributable to the property purchased in the partnership's first taxable year equally among the partners has substantial economic effect, and consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement properly provides for the entire $100,000 cost recovery deduction attributable to such property to be included in MK's distributive share. Furthermore, the allocation to WM of the $100,000 cost recovery deduction attributable to the property purchased in the partnership's third taxable year has substantial economic effect.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Less:						
(a) recovery/depreciation deduction for property bought in year 1	0	(100,000)	0	(100,000)	(100,000)	(100,000)
(b) recovery/depreciation deduction for property bought in year 3	(100,000)	(100,000)	0	0	0	0
Capital account at end of year 3	0	$100,000	$100,000	$200,000	$200,000	$200,000

(xi) Assume the same facts as in (x) and that at the beginning of the partnership's fourth taxable year, the properties purchased in the partnership's first and third taxable years are disposed of for $90,000 and $180,000, respectively, and the partnership is liquidated. With respect to the property purchased in the first taxable year, there is a book loss of $210,000 ($300,000 book value less $90,000) and a taxable loss of $10,000 ($100,000 adjusted tax basis less $90,000). The book loss is allocated equally among the partners, and such allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the taxable loss of $10,000 will, in accordance with section 704(c) principles, be included entirely in MK's distributive share. With respect to the property purchased in the partnership's third taxable year, there is a book and taxable loss of $20,000. Pursuant to the partnership agreement this loss is allocated entirely to WM, and such allocation has substantial economic effect.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 4	0	$100,000	$100,000	$200,000	$200,000	$200,000
Less:						
(a) loss on property bought in year 1	0	(70,000)	0	(70,000)	(10,000)	(70,000)
(b) loss on property bought in year 3	(20,000)	(20,000)	0	0	0	0
Capital account before liquidation	($20,000)	$10,000	$100,000	$130,000	$190,000	$130,000

Partnership liquidation proceeds ($270,000) are properly distributed in accordance with the partners' adjusted positive book capital account balances ($10,000 to WM, $130,000 to JL and $130,000 to MK).

(xii) Assume the same facts as in (x) and that in the partnership's fourth taxable year it has a cost recovery deduction of $60,000 and book depreciation deduction of $180,000 attributable to the property purchased in the partnership's first taxable year, and a cost recovery and book depreciation deduction of $100,000 attributable to the property purchased in the partnership's third taxable year. The $180,000 book depreciation deduction attributable to the property purchased in the partnership's first taxable year is allocated equally among the partners, and such allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $60,000 cost recovery deduction attributable to the property purchased in the first taxable year is, in accordance with section 704(c) principles, included entirely in MK's distributive share. Furthermore, the $100,000 cost recovery deduction attributable to the property purchased in the third taxable year allocated $50,000 to WM, $25,000 to JL, and $25,000 to MK, and such allocation has substantial economic effect.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 4	0	$100,000	$100,000	$200,000	$200,000	$200,000
Less:						
(a) recovery/depreciation deduction for property bought in year 1	0	(60,000)	0	(60,000)	(60,000)	(60,000)
(b) recovery/depreciation deduction for property bought in year 3	(50,000)	(50,000)	(25,000)	(25,000)	(25,000)	(25,000)
Capital account at end of year 4	($50,000)	($10,000)	$75,000	$115,000	$115,000	$115,000

At the end of the partnership's fourth taxable year the adjusted tax bases of the partnership properties acquired in its first and third taxable years are $40,000 and $100,000, respectively. If the properties are disposed of at the beginning of the partnership's fifth taxable year for their adjusted tax bases, there would be no taxable gain or loss, a book loss of $80,000 on the property purchased in the partnership's first taxable year ($120,000 book value less $40,000), and cash available for distribution of $140,000.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 5	($50,000)	($10,000)	$75,000	$115,000	$115,000	$115,000
Less: loss	0	(26,667)	0	(26,667)	0	(26,667)
Capital account before liquidation	($50,000)	($36,667)	$75,000	$88,333	$115,000	$88,333

If the partnership is then liquidated, the $140,000 of cash on hand plus the $36,667 balance that WM would be required to contribute to the partnership (the deficit balance in his book capital account) would be distributed equally between JL and MK in accordance with their adjusted positive book capital account balances.

(xiii) Assume the same facts as in (i). Any tax preferences under section 57(a)(12) attributable to the partnership's cost recovery deductions in the first 2 taxable years will be taken into account equally by WM and JL. If the partnership agreement instead provides that the partnership's cost recovery deductions in its first 2 taxable years are allocated 25 percent to WM and 75 percent to JL (and such allocations have substantial economic effect), the tax preferences attributable to such cost recovery deductions would be taken into account 25 percent by WM and 75 percent by JL. The conclusion in the previous sentence is unchanged even if the partnership's operating expenses (exclusive of cost recovery and depreciation deductions) exceed its operating income in each of the partnership's first 2 taxable years, the resulting net loss is allocated entirely to WM, and the cost recovery deductions are allocated 25 percent to WM and 75 percent to JL (provided such allocations have substantial economic effect). If the partnership agreement instead provides that all income, gain, loss, and deduction (including cost recovery and depreciations) are allocated equally between JL and WM, the tax preferences attributable to the cost recovery deductions would be taken into account equally by JL and WM. In this case, if the partnership has a $100,000 cost recovery deduction in its first taxable year and an additional net loss of $100,000 in its first taxable year (*i.e.*, its operating expenses exceed its operating income by $100,000) and purports to categorize JL's $100,000 distributive share of partnership loss as being attributable to the cost recovery deduction and WM's $100,000 distributive share of partnership loss as being attributable to the net loss, the economic effect of such allocations is not substantial, and each partner will be allocated one-half of all partnership income, gain, loss, and deduction and will take into account one-half of the tax preferences attributable to the cost recovery deductions.

Example (19). (i) DG and JC form a general partnership for the purpose of drilling oil wells. DG contributes an oil lease, which has a fair market value and adjusted tax basis of $100,000. JC contributes $100,000 in cash, which is used to finance the drilling operations. The partnership agreement provides that DG is credited with a capital account of $100,000, and JC is credited with a capital account of $100,000. The agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore such deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(b) (*2*) and (*3*) of this section. The partnership chooses to adjust capital accounts on a simulated cost depletion basis and elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the basis of its section 38 property. The agreement further provides that (1) all additional cash requirements of the partnership will be borne equally by DG and JC, (2) the deductions attributable to the property (including money) contributed by each partner will be allocated to such partner, (3) all other income, gain, loss, and deductions (and item thereof) will be allocated equally between DG and JC, and (4) all cash from operations will be distributed equally between DG and JC. In the partnership's first taxable year $80,000 of partnership intangible drilling cost deductions and $20,000 of cost recovery deductions on partnership equipment are allocated to JC, and the $100,000 basis of the lease is, for purposes of the depletion allowance under sections 611 and 613A(c)(7)(D), allocated to DG. The allocations of income, gain, loss, and deduction provided in the partnership agreement have substantial economic effect. Furthermore, since the allocation of the entire basis of the lease to DG will not result in capital account adjustments (under paragraph (b)(2)(*iv*)(*k*) of this section) the economic effect of which is insubstantial, and since all other partnership allocations are recognized under this paragraph, the allocation of the $100,000 adjusted basis of the lease to DG is, under paragraph (b)(4)(v) of this section, recognized as being in accordance with the partners' interests in partnership capital for purposes of section 613A(c)(7)(D).

(ii) Assume the same facts as in (i) except that the partnership agreement provides that (1) all additional cash requirements of the partnership for additional expenses will be funded by additional contributions from JC, (2) all cash from operations will first be distributed to JC until the excess of such cash distributions over the amount of such additional expense equals his initial $100,000 contributions, (3) all deductions attributable to such additional operating expenses will be allocated to JC, and (4) all income will be allocated to JC until the aggregate amount of income allocated to him equals the amount of partnership operating expenses funded by his initial $100,000 contribution plus the amount of additional operating expenses paid from contributions made solely by him. The allocations of income, gain, loss, and deduction provided in partnership agreement have economic effect. In addition, the economic effect of the allocations provided in the agreement is substantial. Because the partnership's drilling activities are sufficiently speculative, there is not a strong likelihood at the time the disproportionate allocations of loss and deduction to JC are provided for by the partnership agreement that the economic effect of such allocations will be largely offset by allocations of income. In addition, since the allocation of the entire basis of the lease to DG will not result in capital account adjustments (under paragraph (b)(2)(*iv*)(*k*) of this section) the economic effect of which is insubstantial, and since all other partnership allocations are recognized under this paragraph, the allocation of the adjusted basis of the lease to DG is, under paragraph (b)(4)(v) of this section, recognized as being in accordance with the partners' interests in partnership capital under section 613A(c)(7)(D).

(iii) Assume the same facts as in (i) except that all distributions, including those made upon liquidation of the partnership, will be made equally between DG and JC, and no partner is obligated to restore the deficit balance in his capital account to the partnership following the liquidation of his interest for distribution to partners with positive capital account balances. Since liquidation proceeds will be distributed equally between DG and JC irrespective of

their capital account balances, and since no partner is required to restore the deficit balance in his capital account to the partnership upon liquidation (in accordance with paragraph (b)(2)(ii)(b)(3) of this section), the allocations of income, gain, loss, and deduction provided in the partnership agreement do not have economic effect and must be reallocated in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. Under these facts all partnership income, gain, loss, and deduction (and item thereof) will be reallocated equally between JC and DG. Furthermore, the allocation of the $100,000 adjusted tax basis of the lease of DG is not, under paragraph (b)(4)(v) of this section, deemed to be in accordance with the partners' interests in partnership capital under section 613A(c)(7)(D), and such basis must be reallocated in accordance with the partners' interests in partnership capital or income as determined under section 613A(c)(7)(D). The results in this example would be the same if JC's initial cash contribution were $1,000,000 (instead of $100,000), but in such case the partners should consider whether, and to what extent, the provisions of paragraph (b)(1) of § 1.721-1, and principles related thereto, may be applicable.

(iv) Assume the same facts as in (i) and that for the partnership's first taxable year the simulated depletion deduction with respect to the lease is $10,000. Since DG properly was allocated the entire depletable basis of the lease (such allocation having been recognized as being in accordance with DG's interest in partnership capital with respect to such lease), under paragraph (b)(2)(iv)(*k*)(*1*) of this section the partnership's $10,000 simulated depletion deduction is allocated to DG and will reduce his capital account accordingly. If (prior to any additional simulated depletion deductions) the lease is sold for $100,000, paragraph (b)(4)(v) of this section requires that the first $90,000 (*i.e.*, the partnership's simulated adjusted basis in the lease) out of the $100,000 amount realized on such sale be allocated to DG (but does not directly affect his capital account). The partnership agreement allocates the remaining $10,000 amount realized equally between JC and DG (but such allocation does not directly affect their capital accounts). This allocation of the $10,000 portion of amount realized that exceeds the partnership's simulated adjusted basis in the lease will be treated as being in accordance with the partners' allocable shares of such amount realized under section 613A(c)(7)(D) because such allocation will not result in capital account adjustments (under paragraph (b)(2)(iv)(*k*) of this section) the economic effect of which is insubstantial, and all other partnership allocations are recognized under this paragraph. Under paragraph (b)(2)(iv)(*k*) of this section, the partners' capital accounts are adjusted upward by the partnership's simulated gain of $10,000 ($100,000 sales price less $90,000 simulated adjusted basis) in proportion to such partners' allocable shares of the $10,000-portion of the total amount realized that exceeds the partnership's $90,000 simulated adjusted basis ($5,000 to JC and $5,000 to DG). If the lease is sold for $50,000, under paragraph (b)(4)(v) of this section the entire $50,000 amount realized on the sale of the lease will be allocated to DG (but will not directly affect his capital account). Under paragraph (b)(2)(iv)(*k*) of this section the partners' capital accounts will be adjusted downward by the partnership's $40,000 simulated loss ($50,000 sales price less $90,000 simulated adjusted basis) in proportion to the partners' allocable shares of the total amount realized from the property that represents recovery of the partnership's simulated adjusted basis therein. Accordingly, DG's capital account will be reduced by such $40,000.

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Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury (Tax Policy).

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Part III

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-2945-6]

National Oil and Hazardous Substances Contingency Plan; the National Priorities Lists

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Sites from the National Priorities List; Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete eight sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATES: Comments concerning the sites may be submitted on or before January 30, 1986.

ADDRESSES: Comments may be mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: RAB Staff), Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460. The Headquarters Docket clerk will maintain some background information on each site. Comprehensive information on each site is available through the EPA Regional Docket clerks.

The Headquarters public docket is located in EPA Headquarters, Waterside Mall subbasement, 401 M Street, SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the background information from the Headquarters public docket should be directed to the EPA Headquarters Docket Office. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office.

Addresses for the Headquarters and Regional Docket Office are:

For background information on all eight: Denise Sines, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, Subbasement, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

For the Friedman, New Jersey site: Carole Petersen, Region II, U.S. EPA, 26 Federal Plaza, 7th Floor, Room 734, New York, NY 10278, 212/264-8677.

For the Enterprise Avenue and Lehigh, Pennsylvania sites: Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chesnut Streets, Philadelphia, PA 19106, 215/597-0580.

For the PCB Spills site, North Carolina: Gayle Alston, Region IV, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/881-4216.

For the Morris Dump site, Minnesota: Lou Tilley, Region V, U.S. EPA Library, Room 1420, 230 South Dearborn Street, Chicago, IL 60604, 312/353-2022.

For PCB Warehouse site, Commonwealth of the Northern Mariana Islands, PCB Waste sites, Trust Territory of the Pacific Islands, Taputimu Farm site, America Samoa: Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8076.

FOR FURTHER INFORMATION CONTACT: Russel H. Wyer, Director, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete eight sites from the Naitonal Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The eight sites EPA intends to delete from the NPL are:

1. Enterprise Avenue, Philadelphia, Pennsylvania.
2. Friedman Property (once listed as Upper Freehold), Upper Freehold, New Jersey.
3. Lehigh Electric and Engineering Co., Old Forge Borough, Pennsylvania.
4. Morris Arsenic Dump, Morris, Minnesota.
5. PCB Spills, 243 miles of roads, North Carolina.
6. PCB Warehouse, Saipan, Commonwealth of the Northern Mariana Islands.
7. PCB Wastes, Trust Territory of the Pacific Islands.
8. Taputimu Farm, Island of Tutuila, American Samoa.

The EPA will accept comments on these eight sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) of the NCP provides that sites:

> * * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:
>
> (i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;
>
> (ii) All appropriate Fund-financed responses under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or
>
> (iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individuals rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this group of eight sites, EPA's Headquarters Office will accept and evaluate public comments before making the final decision to delete. In the future, EPA's Regional Offices may accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level, similar to those procedures for local comment outlined in EPA's March 27, 1984, "Interim Procedures for Deleting Sites from the NPL." Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of these eight sites. The Agency is considering using similar procedures in the future, with the exception that the notice and comment period would be conducted concurrently at the local level and through the **Federal Register.**

The procedures used were:

1. EPA Regional Offices recommended deletion and prepared relevant documents.

2. EPA Regional Offices provided a two to three week public comment period on the deletion package. The notification was provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories. Notice was also given at that time to any public meetings if they were determined to be necessary.

3. The comments received during the notice and comment period were evaluated before the tentative decision to delete was made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect any deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summaries provide the Agency's rationale for intending to delete these sites from the NPL.

Enterprise Avenue Site, Philadelphia, Pennsylvania

The Enterprise Avenue site located in Philadelphia, Pennsylvania, encompasses approximately 57 acres, in an industrial area. Until mid-1976, the Philadelphia Streets Department used the Enterprise Avenue site for disposal of incineration residue, fly ash, and bulky debris. During the same period, drums containing various industrial and chemical wastes were illegally buried at the site by several waste handling firms. In response to the situation, the Philadelphia Water Department (PWD) conducted exploratory excavations during January 1979 to confirm these allegations. Approximately 1,700 drums were discovered. It was determined that the drums contained or had once contained such wastes as paint sludges, solvents, oils, resins, metal finishing waste, and solid inorganic wastes. On December 30, 1982, the site was proposed for inclusion on National Priorities List (NPL) and appeared on the final NPL on September 8, 1983.

In 1982, the City began remedial activities at the site in which all drums and drum fragments were removed and disposed of off-site, and some of the contaminated soil was excavated and placed into a Resource, Conservation, and Recovery Act (RCRA) permitted landfill. A total of 32,600 cubic yards of excavated soil was identified as contaminated with organic compounds (toluene, benzene, ethylbenzene, or organic halogens). Remaining contaminated soil was stockpiled on-site in two separate piles and a soil cover was partially placed, but not completed.

In 1984, an EPA and City funded Phase II remedial action was started to complete the remedial actions. All of the stockpiled soils were analyzed for a variety of metals and organics. Soils were divided into 100 cubic yard lots for analysis. A Key Indicator Analysis was used to determine which soil lots would be disposed of in an off-site facility. This test established action levels for organic compounds and inorganic elements disposed of at the site as identified from sampling results. If any one indicator exceeded action levels, the entire soil lot was deemed contaminated and disposed of off-site. Action levels for inorganics were selected based upon the Extraction Procedure Toxicity Test used to determine if a waste is hazardous under RCRA. Organic action levels were established utilizing similar methodology and are consistent with levels that would be used today. After removal of contaminated soils from the site, the area was sampled on a grid pattern to insure that all soils not passing the test had been removed and disposed of off-site. The results indicate that the remedial objectives were attained and that all soils considered contaminated were removed. The site was then capped and revegetated as a further precautionary measure and the site fenced. A local public comment period was held August 2, 1985, through August 23, 1985, specifically concerning deletion of the site. No public comments were received.

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate Fund-financed response under CERCLA at the Enterprise Avenue site has been completed, and has determined that no further cleanup by responsible parties is appropriate. The Pennsylvania Department of Environmental Resources (PADER) committed to operate and maintain the site. The PADER has also developed and implemented an operations and maintenance plan for the cap approved by EPA and will monitor the ground water to insure that the water quality remains at background levels.

Friedman Property Site, Upper Freehold, New Jersey

The Friedman Property is a 3-acre site located in Upper Freehold Township, Monmouth County, New Jersey. The site is located near 5 other NPL sites collectively known as the Plumsted sites. In the late 1950's and early 1960's the alleged dumping of free-flowing liquids, household wastes, and demolition debris occurred into a natural ditch which was then covered. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

EPA and NJDEP completed a remedial investigation/feasibility study (RI/FS) in 1984. The RI/FS studied the air, soils, wastes, ground and surface water, and adjacent stream sediments for evidence of contamination. Results of the RI/FS indicate that limited contamination is

present at the site, and that the site was not used as a hazardous waste disposal facility. Its wastes were no different than a typical municipal landfill.

Air monitoring during the RI/FS did not show levels above ambient air quality standards, and no complaints of odors or fumes were received from area citizens before or during testing, or from personnel conducting the RI/FS.

Ground water testing included the installation of six monitoring wells and sampling of domestic wells in the vicinity of the site. The shallow ground water was sampled for standard priority pollutants and indicated slightly elevated levels of zinc below 0.5 mg/l and detected some phenols at 0.03 mg/l. These levels are below current EPA Health Effects Assessment levels of 7.4 mg/l for zinc and 3.5 mg/l for phenols. Deep water sampling revealed only zinc at levels comparable to surface levels and no priority pollutants were detected.

No similarity exists between the shallow and deep ground water data except for comparable levels of naturally occurring zinc. Since similar chemicals were not found between the two aquifers, and geologic analysis does not indicate the presence of interconnections, there is no indication that contamination of the lower aquifer has occurred or will occur in the future.

Stream sediments and surface water quality also were sampled. The study indicated that the adjacent stream sediments had not been significantly contaminated by materials found at the site although trace contamination consistent with routine road maintenance practices from the adjacent highway was found.

In summary, the RI/FS concluded that there are no significant sources of contamination at the site, and contaminants have not migrated from the site and are not expected to migrate. Therefore, no remedial action was appropriate. A local public comment period was held July 12, 1984, through August 11, 1984, after a public meeting was held to discuss the no action alternative. No written comments were reveived. Public comment at the meeting consisted of a discussion of the extent of the problem at the site. A detailed report of this discussion is available through the appropriate EPA docket offices.

EPA, with the concurrence of the State of New Jersey, the determined that the Friedman Property site poses no significant threat to public healh or the environment and, therefore, taking remedial measures is not appropriate. However, EPA and the New Jersey Department of Environmental Protection (NJDEP) have agreed that ground water monitoring of the shallow aquifer in the vicinity of the site will be conducted as a precautionary measure to insure that current site conditions do not change. The State of New Jersey is responsible for periodic ground water monitoring for a period of five years. The results from monitoring conducted by the State of New Jersey to date indicate that conditions remain unchanged.

As an additional precaution, EPA recommended to State, County and local officials that a notice be placed on the property deed and the plot plan amended. The deed notice and plot restrictions would be entered in county land records noting previous use of the site for waste disposal and restricting on-site excavations, agricultural, and residential use.

Lehigh Electric Site, Old Forge Borough, Pennsylvania

The Lehigh Electric site is located in Old Forge Borough, Lackawanna County, Pennsylvania. The site was operated as a transformer service company by the Lehigh Electric Company. About 4,000 transformers and capacitors were stored at the facility. Indiscriminate transformer dielectric fluid handling and disposal occurred at the site, resulting in PCB contamination of on-site soils. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

In 1983, EPA and Pennsylvania Department of Environmental Resources (PADER) completed a remedial investigation and feasibility study (RI/FS) at the site. The study included the analysis of ground water, air and river sediment samples, and the evaluation of clean-up alternatives. A local public comment period was held August 2, 1985, through August 23, 1985, specifically with respect to deletion. No comments were received.

Phase I of the remedial action removed all transformers, transformer contents, and surface debris from the site. This was completed in December 1982. The Phase II remedial action removed contaminated soils, and buildings from the site, and backfilled, graded, and vegetated the site. These actions were completed in September 1984. Sampling was conducted continuously during excavation showing that the remedial action reduced the concentration of PCBs to 10 ppm. Contaminated soils were removed from the site and disposed of in a TSCA approved disposal facility off-site. EPA inspected the site and collected samples in May 1985 and verified that the objectives of the remedial action were met.

After excavation of the contaminated soils was completed, the remaining soils containing low level PCBs were buried underneath 10 to 15 feet of clean backfill. This action eliminates surficial direct contact. PCBs are not readily soluble in water. PCBs remaining are not expected to impact ground water; no PCBs were detected in the ground water samples taken during the RI/FS.

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate Fund-financed response under CERCLA at the Lehigh Electric site has been completed, and has determined that no further cleanup by responsible parties is appropriate. The Pennsylvania Department of Environmental Resources agrees to perform all future operation and maintenance including the continued sampling of ground water PCB.

Morris Arsenic Site, Morris, Minnesota

The Morris Arsenic site is located in Stevens County approximately one mile northeast of Morris, Minnesota. In the early 1940's, approximately 1,500 pounds of arsenic-laced grasshopper bait were buried at the site. The subsequent construction of a highway through the general location of the burial site may have dispersed the bait and has made the discovery of the exact burial location difficult. The primary public health threat at the site was the potential for contamination of the shallow glacial aquifer, a source of drinking water for residential wells and the city of Morris. The site was proposed for inclusion on the National Priorities List (NPL) on September 8, 1983, and appeared on the final NPL on September 21, 1984.

In 1984, the EPA conducted a remedial investigation (RI) to determine the soil contamination levels and the ground water contamination levels. Eleven monitoring wells were installed on and around the site and a sampling program implemented to search for arsenic contamination in the site area.

The results of the RI indicate that arsenic levels in the surface soils were all below 7 μg/kg, well within the natural background range of 3 to 14 μg/kg. Arsenic concentrations in the soils at the water table were somewhat elevated, ranging between 20 and 40 μg/kg, but far below the Centers for Disease Control (CDC) action level of 100 μg/kg for surficial soils. CDC was consulted with respect to the soils and concurred that no action was necessary. Ground water samples taken from the monitoring wells and from nearby domestic sources indicate that arsenic

levels were considerably below the Primary Drinking Water Standard of 50 μg/l. Concentrations of arsenic were found to be at or near 3 μg/l. The municipal well field for Morris is approximately one mile in the opposite direction of ground water flow and would not be impacted if there were contamination at the site. Other domestic wells in the site vicinity were sampled and did not show any indications of arsenic contamination above background. A public meeting was held on May 2, 1985, and a local three-week public comment period was conducted from April 23, 1985, to May 14, 1985, concerning the no action alternative. No public comments were received.

EPA, with the concurrence of the State of Minnesota, has determined that the Morris Arsenic site poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate. EPA has recommended to State, County, and local officials that as a further precaution, a notice be placed on the property. The deed notice would be entered in county land records noting previous use of the site for the disposal of a hazardous substance.

PCB Spills Site, North Carolina

Between June 1978 and August 1978, over 30,000 gallons of waste transformer oil contaminated with polychlorinated biphenyls (PCB's) were deliberately discharged along 243 noncontiguous miles of highway shoulders in fourteen counties in North Carolina. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

The State conducted several investigations and feasibility studies between 1979 and 1981 and ascertained that contamination did not migrate from the spill areas into surface water, biota or ground water. A detailed report was prepared and evaluated by EPA concerning the siting and construction of the landfill to receive the contaminated soils and wastes.

In May 1982, EPA and the State of North Carolina initiated remedial action to: (1) Construct a landfill for disposal of PCB wastes; (2) remove, transport and dispose of contaminated soils; and (3) reconstruct the highway shoulders. Disposal of contaminated soil was completed in November 1982, and the Toxic Substance Control Act (TSCA) approved landfill was capped, graded, and vegetated.

Sampling was conducted during removal at the beginning and end points of the contaminated strips in order to insure that all contaminated soils were removed. Random samples were collected from the areas after soils were removed. Sampling results indicate that a cleanup level of 10 ppm or less was achieved for nearly all of the samples. No soils contaminated with PCBs above 50 ppm were left in place. Excavated areas were then filled with clean soil.

A local three-week public comment period was held May 10, 1984, through May 31, 1984, with respect to deletion. No public comments were received.

EPA, with the concurrence of the State of North Carolina, has determined that all appropriate Fund-financed response under CERCLA at the PCB Spills site has been completed and has determined that no further cleanup by responsible parties is appropriate. The State is currently monitoring the landfill constructed to contain contaminated soils removed from the site and continues to meet all requirements for post-closure monitoring.

PCB Warehouse Site, Saipan, Commonwealth of the Northern Mariana Islands

PCB Warehouse is a Public Works warehouse building where intact drums of PCB transformer oil were stored. The warehouse is located adjacent to the Philippine Sea. The concern was that the PCB oil could be released in the event of a severe tropical storm thereby endangering public health and the environment through risk of direct contact and contamination of marine life. The site was proposed for inclusion on the National Priorities List (NPL) on December 20, 1982, and appeared on the final NPL on September 8, 1983.

A remedial investigation of the site in December 1982, revealed the presence of 21 drums of PCB contaminated oil and 3 crates of sodium arsenite. Drums were found to be intact and there was no evidence of any reported spills or leaks.

The transformers from which the oil was drained were located at the Saipan Headquarters Building and at the Department of Public Works Yard. There was no indication of leaks or spills near those transformers.

An immediate removal was conducted in 1984 that removed the 21 drums of PCB wastes and 3 crates of sodium arsenite. These were repackaged and transported back to the United States for disposal in a TSCA approved disposal facility. The sodium arsenite was disposed of in the continental United States in a Resource Conservation and Recovery Act (RCRA) permitted facility. After removal, testing was conducted on site, to insure that cleanup was complete and that no spills had occurred during or before cleanup. Test results confirmed that no PCB wastes had been spilled during the removal action.

A local public comment period was held June 13, 1985, through June 28, 1985 with respect to deletion. No public comments were received.

EPA, with the concurrence of the Commonwealth of the Northern Mariana Islands, has determined that all appropriate Fund-financed response under CERCLA has been completed at the PCB Warehouse site, and that no further cleanup by responsible parties is appropriate.

PCB Waste Sites, Trust Territory of the Pacific Islands

PCB Waste sites is a unique site comprised of 8 separate locations scattered throughout the Trust Territories of the Pacific Islands, an area larger than the continental United States. The sites were located on the islands of Koror in the Republic of Palau, Moen in Truk State, Yap, Kosrae, and two on both Ponape and Majuro. The sites represented a threat to public health and the environment because of their proximity to human populations, ground water supplies, and marine resources. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

A remedial investigation at the sites in December 1982, revealed that the PCBs in drums and transformers, and some pesticides and chemicals were improperly stored at the stites. A previous oil spill was apparent at one site formerly used to store transformers. Some sites had intact transformer oil containers located in unsecured areas open to the general public.

An immediate removal was conducted in 1984 removing all PCB wastes over 50 ppm and the other hazardous wastes found at the various sites.

PCB fluids under 50 ppm were blended and burned on the islands. Other PCB wastes were transported to a TSCA approved disposal facility in the United States. Other hazardous wastes at the sites were removed and disposed of in the continential United States in a RCRA permitted facility.

During the removal action, soils and waste oils were sampled in the field using a portable testing kit that allowed for the segregation of wastes for transport. A target of below 50 ppm PCB was selected. Only one site had contaminated soils. The site was formerly used for transformer storage and is located in a fenced-in rural area. Testing was conducted where the spill

occurred before and after removal of contaminated soils to ascertain whether contamination over 50 ppm of PCB remained. No PCBs above 50 ppm were found in structures or soils after removal. A local public comment period was held July 1, 1985, through July 22, 1985, with respect to deletion. No comments were received.

EPA, with the concurrence of the Trust Territory of the Pacific Islands, has determined that all appropriate Fund-financed response under CERCLA has been completed at the PCB Waste sites, and that no further cleanup by responsponsible parties is appropriate.

Taputimu Farm Site, Island of Tutuila, American Samoa

The Taputimu Farm site consists of three rooms of a farm warehouse and a trailer. The site was the repository for unused and out-of-date agricultural chemicals and pesticides on American Samoa. A remedial investigation and feasibility study (RI/FS) conducted in 1982 revealed that the materials were improperly stored within the facility buildings. Analysis of the materials collected inside the building identified several pesticides and chlorinated organic solvents. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

The chemical/pesticide materials were stored on a concrete or steel floor of the storage areas and trailer. Soil sampling for primary pollutants and visual examination of the site confirmed that contamination was confined to the interior floor areas of the warehouse and trailer.

The remedial action alternative selected and implemented at Taputimu Farm in 1984, involved repacking the chemical/pesticide materials for shipping to the continental United States for disposal in a RCRA approved facility. The remedial action also included washing down all exposed surfaces of the storage areas with bleach to ensure deactivation of any residual materials not picked up by sweeping and vacuuming. Finally, two layers of epoxy paint were applied to the interior walls and three inches of concrete were poured over the existing floor thereby eliminating the threat of direct contact. The American Samoa Government only utilizes the structure for farm equipment storage and has banned all food storage from the building. Since all materials were removed and contaminated surfaces cleaned and sealed, no further monitoring was conducted. Warning signs were placed on the building prohibiting food storage as an additional precautionary measure.

A local public comment period was held from June 13, 1985, through June 28, 1985, with respect to deletion. No public comments were received.

EPA, with the concurrence of the Government of American Samoa, has determined that all appropriate Fund-financed response under CERCLA has been completed at the Taputimu Farm site, and that no further cleanup by responsible parties is appropriate.

Dated: December 18, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 85-30806 Filed 12-30-85; 8:45 am]

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federal register

Tuesday
December 31, 1985

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AH-FRL-2937-6]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that will make nonconformance penalties (NCPs) available for specific emission standards taking effect in model years 1987 and 1988. The availability of NCPs will allow a manufacturer of heavy-duty engines (HDEs) or heavy/duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV could not be issued a certificate.

This rule, which was proposed in 50 FR 35402 (August 30, 1985), specifies emission standards for which NCPs will be made available, as well as specific upper limits and penalty rates for those emission standards. It follows the "generic" NCP rule, published August 30, 1985, at 50 FR 35374, which established the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP, and other general aspects of an NCP rule. This rule also includes a few general aspects of an NCP rule which were not fully addressed in the generic rule.

Regulations affected by this rulemaking are codified in Subpart L of 40 CFR Part 86.

EFFECTIVE DATE: January 29, 1986.

ADDRESS: *Public Docket:* Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-85-02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/Gallery 1, 401 M Street, SW., Washington, DC, 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division [EN-340F], Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Telephone (202) 382-2487 or (202) 382-2547.

SUPPLEMENTARY INFORMATION:

A. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty engine emission standards.[1] Following *International Harvester* v. *Ruckelshaus,* 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers (technological laggards) might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to noncomforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the noncomforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). They include the part of the light-duty truck (LDT) class between 6,001 and 8,500 pounds GVWR—the heavy light-duty trucks (HLDTs). The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects the NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

However, if the emission level of a vehicle or engine exceeds the upper limit of nonconformity, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer.

B. Background

This final rule follows the recently completed generic phase (Phase I) of the NCP rulemaking (50 FR 35374, August 30, 1985) and the notice of proposed rulemaking (NPRM) for the second NCP phase (Phase II) (50 FR 35402, August 30, 1985). During the generic phase, EPA published regulations covering when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity.

This rule completes Phase II of the NCP rulemakings. EPA has applied the Phase I concepts and is establishing specific emissions standards for which NCPs will be available, the upper limits for those standards, and numerical values for the variables in the penalty rate formula for particular subclasses of engines. This rule also includes a few general aspects of an NCP rule which were not fully addressed in Phase I.

[1] The existence of NCPs, however, does not change the criteria under which the standards should be set under section 202. The Natural Resources Defense Council (NRDC) objected to similar language which appeared in the preamble of the notice of proposed rulemaking (NPRM) for this rule (and also in the NPRM and final rule for Phase I of the NCP process). NRDC believed the proposal language was a significant departure from the language of the consensus document of the regulatory negotiation which provided the guidelines for this rule. *See* 50 FR 35374, 35375 (August 30, 1985). However, no substantial change was intended, and EPA here adopts the language of the consensus document.

The U.S. District Court for the District of Columbia in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84-758 (D.D.C. Sept. 14, 1984), ordered EPA to publish the final rule for Phase II by December 31, 1985.

C. Discussion of Final Rule and Comments

This final rule adopts most of the provisions proposed in the NPRM for the reasons stated therein. EPA will not discuss all of the provisions of the final rule in this notice. Instead, EPA will discuss only the most significant provisions, or those that have been significantly revised or that were addressed in the comments.

During the time that was available for public comment on the NPRM, seven organizations presented written comments. Three were heavy-duty vehicle or engine manufacturers, two were industry trade associations, one was a state air pollution control program and one was an environmental organization.

EPA did not hold a public hearing for this rulemaking because it was not requested; however, a public workshop was held on September 19, 1985, at the request of a commenter. A summary of the workshop and follow-up information is contained in the public docket for this rulemaking. The Engine Manufacturers Association urged EPA to schedule an additional workshop or other meeting prior to the publication of this final rule to allow interested parties the opportunity to express their opinions on the issues at hand. However, due to the court-ordered publication deadline of the rule, time was not available to permit EPA to grant such a request.

1. Eligibility for Nonconformance Penalties

The Phase I NCP rulemaking established three "generic" criteria for determining the emission standards for which NCPs will be offered.

First, the emission standard in question must become significantly more difficult to meet. This criterion may be met when either the standard itself becomes more stringent or compliance with it is made more difficult because another standard has become more stringent. In the latter case, an NCP for either standard may be appropriate.

Second, substantial work must be required for compliance with the standard. "Substantial work" is defined as the application of technology not previously used in that vehicle/engine class or subclass or the significant modification of existing technology or design parameters needed to bring the vehicle or engine into compliance. Obviously, substantial effort would not be required if many manufacturers' vehicles/engines were already meeting the revised standard or could do so with relatively minor calibration changes or modifications.

Finally, EPA must determine that a technological laggard is likely to develop. A technological laggard is a manufacturer who cannot meet the particular emission standard due to technological (not economic) difficulties and who consequently might be forced out of the marketplace. EPA's determination is based on an evaluation of the two criteria discussed above. However, even when these criterial are met, EPA may find that no technological laggard is likely. For example, a standard may become significantly more stringent and substantial effort might be required for compliance, but if that significant effort involves a relatively straightforward transfer of technology already well-developed for other vehicle classes, a technological laggard probably would not develop.

Eligibility for NCPs is determined by evaluating the requirements of each new or revised standard against the criteria discussed above. Based on its evaluation of these requirements, EPA proposed in the NPRM that NCPs be available for the following emission standards which take effect in model years 1987 and 1988:

—1987 diesel HLDT (HLDDT) particulate standard: 0.26 grams per mile (g/mi)
—1987 gasoline-fueled light HDE (LHDGE) hydrocarbon (HC) standard: 1.1 grams per brake horsepower-hour (g/BHP-hr)
—1987 LHDGE carbon monoxide (CO) standard: 14.4 g/BHP-hr
—1988 diesel HDE (HDDE) NO_x standard: 6.0 g/BHP-hr
—1988 HDDE participate standard: 0.60 g/BHP-hr

EPA's rationale as to why NCPs are being made available for these standards listed above is presented in the NPRM. The Natural Resources Defense Council (NRDC) did not support the proposed availability of NCPs for the HDDE particulate and NO_x standards because it did not agree that these standards will require substantial work or that there are likely to be laggards. NRDC's assertions, however, are not enough to rebut. The Agency's analysis at 50 FR 35404 which indicates that HDE manufacturers' lack of experience with particulate control and the inherent tradeoff between particulate and NO_x emissions are likely to require substantial work to overcome and to result in the development of technological laggards. Therefore, EPA believes that NCPs are appropriate for these standards and for all the other standards identified above and adopts the proposal on availability unchanged.

Eligibility for NCPs for longer term (1989 and later) standards will be determined in subsequent rulemaking(s) (Phase III, etc.).

2. Upper Limits for 1988 HDDE Particulate NCP

The current NCP provisions (50 FR 35374) prescribe that the previously applicable emission standard shall serve as the upper limit when NCPs are established for a more stringent emission standard. However, where there is no previous emission standard, the NCP provisions call for EPA to propose an upper limit. This is the case for the 1988 HDDE particulate standard, so EPA proposed two possible upper limits using two distinct approaches: (1) To set the upper limit at a "practicable" level that could be achieved by technological laggards with some reasonable effort on the part of the worst performers, in order to achieve some reduction in emissions from the highest emitting engines (0.80 g/BHP-hr), and (2) to set the upper limit at a level that could be achieved by all manufacturers/families (i.e., by the highest emitting engines), so as not to exclude any manufacturer/family on the basis of its current emissions from the market (0.95 g/BHP-hr). EPA also proposed that the same upper limit apply to all three HDDE subclasses.

The California Air Resources Board (CARB), the Engine Manufacturers Association (EMA), the Manufacturers of Emission Controls Association (MECA) and NRDC commented on the issue. EMA stated that EPA should set the upper limit at a level that would not exclude any offering from the market (i.e., at the level of the worst performer). EMA interpreted section 206(g) of the Clean Air Act as indicating Congressional intent for this approach, and EMA also stated that agreement had been reached in the regulatory negotiation for the Phase I rulemaking that the upper limit should be achievable by all manufacturers. EMA stated that setting the upper limit at the level of the highest emitting engine was the only way to assure that this goal would be achieved. EMA also stated that even at the higher upper limit, the requirement posed by the 1988 standards to lower particulate and NO_x emissions simultaneously might force out the highest emitters because of the NO_x/particulate tradeoff effect.

EMA comments supported EPA's proposal to set a common particulate upper limit for all HDDEs, rather than having separate limits for each of the three subclasses. EMA maintained that there was insufficient data at the present time to allow calculation of separate subclass upper limits. EMA felt that even if such data became available EPA should retain the common upper limit for the 1988 standards, although EMA maintained that it was in general agreement with the concept of separate upper limits.

The comments received from CARB, MECA and NRDC supported the concept that the HDDE particulate upper limit should achieve a practicable reduction from the highest-emitting engines. CARB said that most engines, including worst performers, could achieve moderate emission reductions with relatively minor design changes. MECA said that NCPs should not excuse the technological laggard from making a reasonable effort to control emissions. MECA stated that Congress intended that laggards achieve more than the status quo in terms of emission reduction. NRDC also supported this position, stating that Congress must have sought some improvement on the part of the worst performers or there would have been no point in requiring the establishment of upper limits. CARB stated that it strongly prefers an upper limit of 0.80 g/BHP-hr or lower. MECA and NRDC did not endorse either of the specific upper limit levels proposed, although NRDC stated that it was definitely opposed to a level of 0.95 g/BHP-hr. Neither CARB, MECA nor NRDC commented on the concept of different or uniform upper limits for the three HDDE subclasses.

EPA agrees with CARB, NRDC and MECA that Congress intended that upper limits require reasonably achievable reductions from the highest emitters. the language of section 206(g) of the Act calling for the Administrator to set upper limits at "practicable" levels implies that EPA is to require achievable emission reductions. As noted by NRDC, if Congress had not intended lagging engines to achieve some reductions, it would have had little reason to limit the availability of NCPs to those able to meet an upper limit. Moreover, the statutory guidelines for calculating NCPs makes clear that Congress intended NCPs to encourage eventual compliance. Requiring reasonably achievable reductions from engines for which NCPs are being paid is consistent with this statutory scheme.

EPA does not agree with EMA that it must set the upper limit at the uncontrolled level of the highest emitter in order to assure that all engines will be able to achieve the limit. The Agency is in the business of determining what emission reductions engines can achieve, and there is no reason to believe that in all cases, or even in some, the highest emitting engines cannot achieve some reductions over uncontrolled levels. Therefore, given the Clean Air Act's language and purpose, and the fact that HDDE particulate emissions are currently uncontrolled, EPA concludes that setting the upper limit at a level requiring reasonably achievable reductions represents the preferred approach from the standpoint of both Congressional intent and environmental benefit.

The next step is to determine what the upper limit should be in this case. There is some merit in EMA's concern regarding the NO_x/particulate tradeoff effect; however, EMA submitted no data as to what the effect of the tradeoff might be or showing that the proposed upper limit of 0.80 g/BHP-hr was not practicable. EPA in fact considered the tradeoff effect in determining the proposed upper limit (0.80 g/BHP-hr), but has chosen to re-examine the issue in response to the comment from EMA.

The approach used to estimate the tradeoff effect was to examine the NO_x and particulate levels for the California engines in the EPA database (confidential data previously submitted by the manufacturers) to see what effect the California NO_x standard has on particulate levels for current engines.[2] Engines certified for sale in California are representative of the technology necessary to meet the 1988 6.0 g/BHP-hr NO_x standard, since they must meet a California standard of 5.1 g/BHP-hr on the transient test, which is almost a full g/BHP-hr more stringent than the 1988 Federal standard. Available data for 18 California engine families in the sample (see Figure 1) indicated a mean low-mileage particulate level of 0.61 g/BHP-hr, with a standard deviation of 0.12 g/BHP-hr, at a mean low-mileage NO_x level of 4.4 g/BHP-hr. This particulate level is about 0.1 g/BHP-hr higher than the average for the data available on Federal engines which was used in the NPRM (see Figure 2).

Since the California low-mileage NO_x levels are much lower than would be required to meet the Federal standard, California particulate levels are likely to be higher than they would be under the 6.0 g/BHP-hr Federal NO_x standard. Thus the NO_x/particulate tradeoff effects of increasing the HDDE NO_x to the 5.3 g/BHP-hr low mileage target level for the 6.0 g/BHP-hr standard must be determined.

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[2] Emission information from the Federal engines in this same data base was used to determine the upper limit.

Figure 1

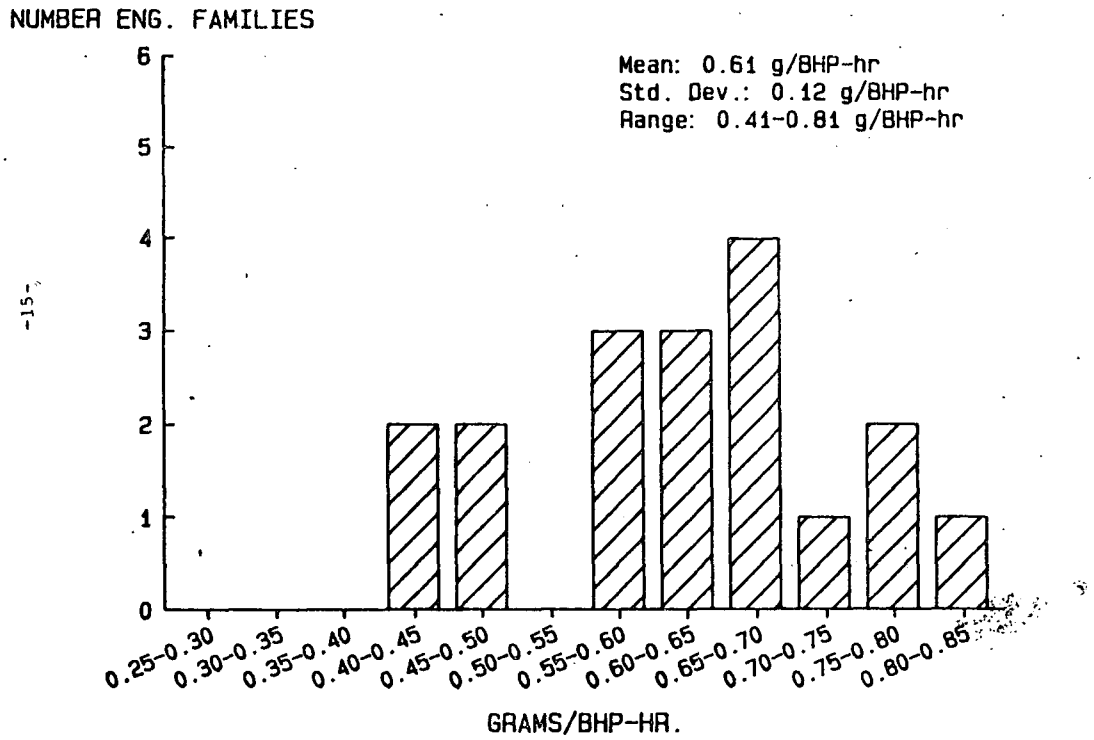

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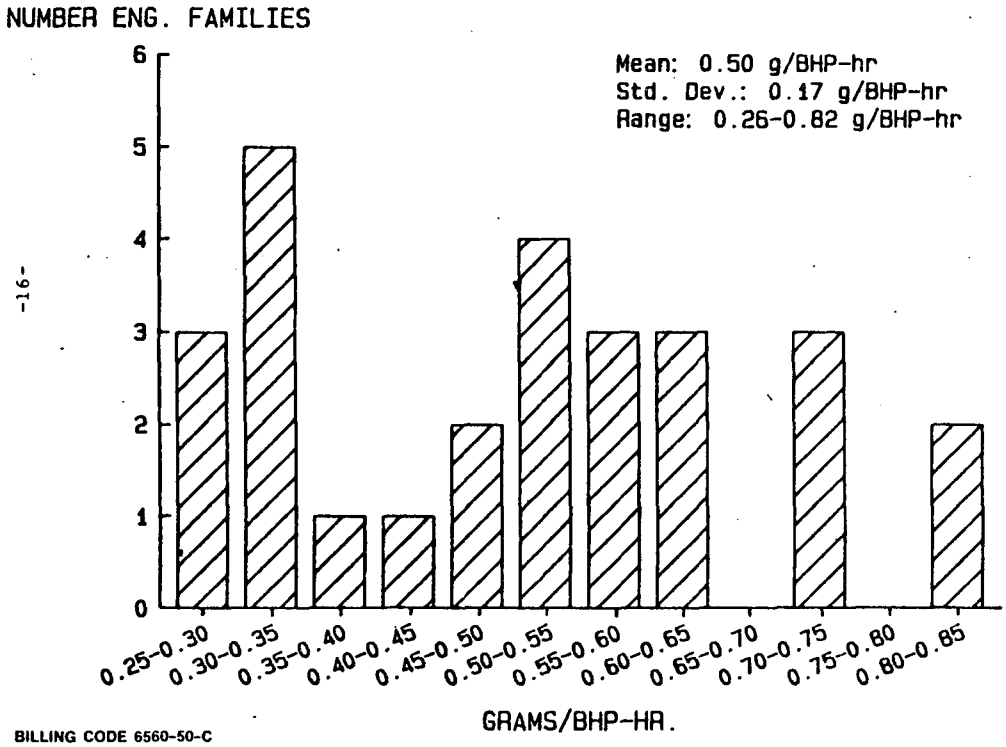
Figure 2



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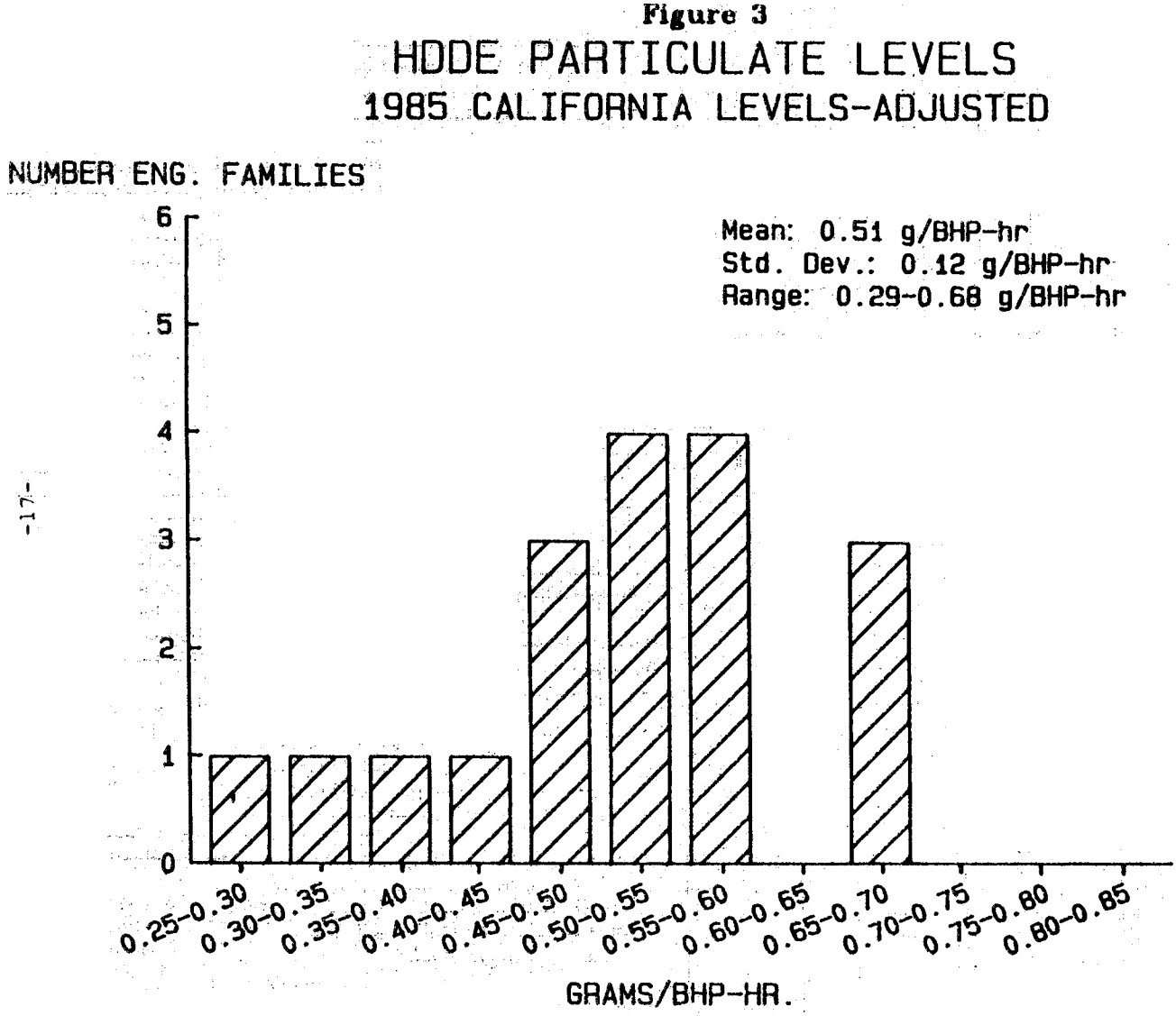
A reasonable approach to estimating the tradeoff effect is to assume that NO_x and particulate levels could be varied by changing injection timing, as was done in the Regulatory Impact Analysis (RIA) for the NO_x/particulate rulemaking.[3] Using the injection timing tradeoff curve in the RIA (p. 2–52), EPA estimates that an increase of 0.9 g/BHP-hr NO_x (from 4.4 to 5.3 g/BHP-hr) would allow average particulate levels to decrease by about 0.1 g/BHP-hr. Thus, raising the NO_x standard to 6.0 g/BHP-hr would allow the particulate levels of the California engines in the sample to be reduced to 0.51 g/BHP-hr, which is about the same as the average particulate level for the Federal engines in the sample (see Figure 3). EPA therefore concludes that on average there is no effect on achievable particulate levels due to the 6.0 gram NO_x standard. Further, the high end of the range of adjusted California engine particulate emissions is approximately 0.65–0.70 g/BHP-hr, which represents the range of target levels estimated in the NPRM to be necessary to achieve an upper limit level of 0.80 g/BHP-hr.

Figure 3



As was discussed in the NPRM, current Federal engine low mileage particulate emissions range from 0.26 to 0.82 g/BHP-hr with a mean of 0.50 g/BHP-hr. Accounting for the effects of variability and deterioration, these represent a range of 0.37 to 0.93 g/BHP-hr with a mean of 0.62 g/BHP-hr. A particulate upper limit of 0.80 g/BHP-hr

[3] "Regulatory Impact Analysis: Oxides of Nitrogen Pollutant Specific Study and Summary and Analysis of Comments Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous Emission Regulations for 1987 and Later Model Year Light-Duty Vehicles, and for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines: Particulate Emission Regulations for 1988 and Later Model Year Heavy-Duty Diesel Engines," U.S. EPA, March 1985.

represents about a 15 percent reduction from the highest emitting engine and less from the remainder. Therefore, given that HDDE particulate is currently uncontrolled, EPA concludes that 0.80 g/BHP-hr represents a practicable upper limit for the 1988 HDDE particulate NCP, even with the effects of the more stringent 1988 HDE NO_x standard.

Given that no further particulate emission data was provided by the commenters, and the current data indicates that a common upper limit is appropriate, EPA will retain a common upper limit for all three HDDE subclasses. In future NCP rulemakings EPA will consider to establishing separate subclass upper limits for any pollutant or vehicle/engine class as deemed appropriate and consistent with the other portions of the pertinent NCP rule.

3. HDDE Particulate Deterioration Factors

The deterioration factors (DFs) used in calculating the NCP upper limits for the 1988 HDDE particulate standard were taken from the RIA for that rulemaking. Since actual particulate DF data were unavailable, the RIA analysis used HC emissions as an acceptable surrogate for determining particulate matter DFs. EMA stated that this choice was inappropriate, since it resulted in an "artificially deflated" particulate emission DF, which in turn affected the selection of an upper limit for the NCP. EMA maintained that EPA should have utilized in-use deterioration factors, which were available from a cooperative EPA/industry in-use testing program.

EPA believes that ideally the DF for particulate emissions should be based on particulate data from certification testing of HDDES, such as are available for NO_x emissions. However, no certification type data are available for HDDE particulate emissions. EPA considered using LDDV and LDDT particulate DF data, but these vehicles/engines were not considered representative of most HDDEs. Substitution of the available in-use DF data, as EMA suggested, clearly would have been inappropriate, since it would have resulted in the calculation of an artifically inflated upper limit. As was discussed in the RIA supporting the HDE NO_x/particulate final rule (p. 2–35), the available in-use DF data reflect tampering and malmaintenance and are not indicative of the performance of well maintained engines. Further, current engine designs are also not representative of the control technology expected to be used to meet the standard, since essentially no emission control modifications are involved. It is therefore unrealistic to expect that emissions from controlled engines would deteriorate at the same rate as emissions from uncontrolled engines.

As was pointed out in the RIA, EPA believes that HC emissions are an appropriate surrogate for particulate emissions for purposes of DF determination. Both types of emissions arise from essentially the same sources. Since aftertreatment devices such as trap-oxidizers are not expected to be used to meet the 1988 standards, emission control will likely be achieved through engine and component modifications. The modifications which reduce HC similarly reduce particulate emissions, so that engine wear which increases HC will similarly increase prarticulate emissions. Thus, there should be no substantial difference in the deterioration rates for the two types of emissions.

An apparent inconsistency in EMA's position is shown by the fact that its suggested DFs would result in particulate emission target levels of 0.1–0.3 g/BHP-hr, which manufacturers have stated are not achievable without trap-oxidizers. However, as is summarized in the aforementioned portions of the RIA (p. 2–35), almost all manufacturers commenting individually on the particulate standard indicated particulate target levels higher than those derived from EMA's comments. Therefore, given that no certification HDDE particulate DF information was available, EPA concludes that the DF used in calculating the upper limit for the 1988 particulate emissions NCP was determined by the best available means. It would not have been appropriate to utilize in-use particulate emissions data, as EMA suggested.

4. Penalty Rates

a. Parameters

For those standards for which EPA is specifying that NCPs be made available (the NCP standards), EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{50}, COC_{90}, MC_{50}, and F. The NCP formula was promulgated in the recent Phase I final rule (50 FR 35374, August 30, 1985).

COC_{50} is an estimate of the industry-wide average incremental per engine or per vehicle cost associated with meeting the NCP standard for engines and vehicles in the NCP category. COC_{50} generally measures the difference between the cost of complying with the NCP standard and the cost complying with the NCP standard and the cost of complying with the upper emissions limit for the NCP standard. In the case of the HDDE particulate standard, for which there is no prior emission standard, COC_{50} measures the average initial costs of compliance. COC_{50} is the sum of the manufacturer costs and owner costs associated with complying with the NCP standard.

The manufacturer cost component of COC_{50} represents the average per engine or per vehicle cost to manufacturers of engines complying with the NCP standard. It is derived from cost estimates prepared for analyses used in setting the NCP standard. When the cost estimates in the analyses are provided as retail price equivalents (RPEs), those costs have been reduced to eliminate manufacturer profit and dealer overhead and profit. Based on the formulas normally used by EPA in estimating RPEs, this adjustment is accomplished by dividing the RPE by 1.16 for LDDTs and by 1.10 for HDGEs and HDDEs.

Certification costs are not included in COC_{50}. Manufacturers will often incur certification costs even when NCPs are used, for instance when payment of NCPs is elected after a Selective Enforcement Audit (SEA) failure. In some cases they may carry over a prior year's certification results, thus delaying or avoiding certification procedures during the period the NCP is used. However, manufacturers using NCPs will incur the additional cost of PCA testing, which may be comparable to certification costs.

Owner costs include additional expenses for maintenance, parts replacement, and fuel that will be incurred throughout the useful life of the vehicle. These costs are also derived from analyses prepared in support of the NCP standard-setting process and, as in the analyses, are discounted to the year of purchase using a 10 percent discount rate.

COC_{90} is EPA's best estimate of the 90th percentile incremental per engine or per vehicle cost associated with meeting the NCP standard within an NCP category. Thus, COC_{90} is estimated to represent a level such that compliance costs exceed or equal COC_{90} for only 10 percent of engines or vehicles in the NCP category, COC_{90}, like COC_{50}, includes both manufacturer and owner costs. These cost components are defined similarly to those for COC_{50} except that they are 90th percentile costs rather than average costs.

EPA has not been able to identify true 90th percentile compliance costs with

complete precision. Most cost estimates developed in the standard-setting process are averages or expected ranges of cost. The cost estimation process is not sufficiently detailed or precise to support development of the desired statistical distribution of costs. Thus, except where more detailed analysis was feasible, the high ends of the expected cost ranges were used as a surrogate for COC_{90}.

Due to the uncertainty involved in developing the COC_{90} values, EPA requested comments on whether it should limit the value of COC_{90} such that it does not exceed the value of COC_{50} by more than a factor of 1.3 and whether 1.3 is an appropriate value. The NPRM included both the estimated values of COC_{90} and those values limited such that they do not exceed COC_{50} by more than a factor of 1.3.

EPA received comments from CARB, EMA, MECA and NRDC on this issue. CARB, NRDC and MECA opposed the use of a numerical factor to estimate COC_{90}. CARB stated that "[i]t is not appropriate to rely on a fixed factor when more accurate data are available." CARB added that the use of a factor of 1.3 could artificially depress the value of COC_{90}, which could result in "overly low penalties, and in turn may afford undue competitive advantages to fee-paying manufacturers." NRDC commented that "[t]he proper approach is to estimate COC_{90} directly and let it fall where it may." MECA commented that "it is far preferable for EPA to base COC_{90} on actual cost data, and where that data is limited to base it on the high end of the expected cost ranges as EPA has done in calculating the proposed uncapped COC_{90} figures." MECA added that "[a]rbitrary limits on COC_{90} may in some instances create competitive disadvantages for conforming manufacturers."

EMA commented that EPA should limit the value of COC_{90} such that it does not exceed the value of COC_{50} by more than a factor of 1.3. EMA added that a factor of 1.2 should be used because it believes that the best available cost data for the calculation of COC_{90} is no more accurate than the marginal cost data used to estimate MC_{90} and EPA has proposed to use a factor of 1.2 to estimate MC_{90}.

EPA does not agree with EMA's comment that the best available cost data for the calculation of COC_{90} is no more accurate than the marginal cost data use to estimate MC_{90}. EPA has stated that the best available cost data used in the standard setting process is not sufficiently detailed to develop a precise 90th percentile compliance cost. However, this data does contain expected ranges of costs, the high ends of which can be used as a surrogate for COC_{90}. The available marginal cost data, on the other hand, does not allow EPA in most cases to reasonably estimate a value of MC_{90}. Therefore, EPA does not believe that COC_{90} and MC_{90} should be estimated using the same approach. Furthermore, EPA agrees with the comments of MECA and NRDC that the best approach is to use the available cost data, not an arbitrary factor, especially when the use of such a factor could place a conforming manufacturer at a competitive disadvantage.

EPA recognizes that the COC_{90} values being promulgated may be higher than the true 90th percentile compliance costs because the Agency considered only variations in the estimated cost of compliance and did not consider the ability of these engines to survive in the marketplace. It is quite possible that engines that would cost as much to control as the promulgated COC_{90} values will not be able to compete with other engines. Thus, the promulgated COC_{90} values would be higher than the true 90th percentile compliance costs. The Agency will consider revising in a future rulemaking the COC_{90} values upon an adequate presentation of data to take into account the effect of competition. Anyone desiring to submit additional cost information should contact the Agency to discuss the type or form of submission to facilitate its consideration.

EMA commented that EPA should be "continuously mindful of changes in technology which could seriously influence the cost of compliance with emission standards." EPA intends to do so in order to ensure that conforming manufacturers are not placed at a competitive disadvantage; however, EPA would only make changes through rulemaking prior to the first model year that the NCP will become available.

MC_{50} is the industry-wide average marginal cost of compliance with the NCP standard for engines and vehicles in the NCP category. MC_{50} is measured in dollars per gram per brake horsepower-hour for heavy-duty engines and vehicles and in dollars per gram per mile for light-duty trucks. MC_{50} measures the economic trade-off between emissions reduction and cost as certified emission levels are reduced. As with COC_{50} and COC_{90}, MC_{50} has both a manufacturer and an owner cost component.

Most cost analyses performed during the standard-setting process do not estimate the marginal cost of compliance. Doing so would require much more detailed knowledge of the emission control alternatives and costs facing manufacturers and the resulting impacts on the cost of ownership than is typically available. Marginal cost estimates have thus been obtained indirectly, from one of two sources. The first source compares current emission levels to emission levels under the new standard. Then COC_{50} is divided by the required emission reduction to determine the cost per unit (g/BHP-hr or g/mi) of achieving compliance. Another source occurs where costs of ownership are expected to rise due to fuel economy reductions that sometimes accompany lower emission levels. In this case, the marginal cost of fuel economy as a function of the emissions level is estimated in the vicinity of the NCP standard.

EMA commented that comparing current emission levels to the more stringent standards significantly underestimates the emission reduction needed from control technology in order to meet the standard and that this underestimation causes the MC_{50} calculated by EPA to be significantly higher. EMA contends that the EPA methodology of comparing current emission levels to future standards embodies emission levels of dissimilar character.

EPA does not agree with EMA's comment on this issue. The current emission levels that EPA used included deterioration and variability effects and therefore it was appropriate to compare them directly to the more stringent standards since manufacturers must account for these effects in complying with the standards. EPA could have factored out these effects and measured the reduction from target level to target level, but chose the other approach since the entire NCP program is built around emission standards or numbers of similar character such as the upper limits.

F is a factor used to estimate MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines and vehicles in the NCP category. MC_{90} represents the penalty rate for compliance levels near the standard and is equal to MC_{50} multiplied by F. The Phase I final rule stated that the value of F would be in the range of 1.1 to 1.3. In cases where no reasonable estimate of MC_{90} can be made based on existing marginal cost data, EPA used a presumptive value of 1.2 for F. This approach was supported in comments by EMA and NRDC.

The NCP Phase I final rule stated that the Consumer Price Index (CPI) would be used to adjust NCPs for inflation for the second and subsequent years that

NCPs for the same standard are available. EPA will also use the CPI to adjust the penalty parameters developed in this rule to dollars as of January of the calendar year preceding the model year in which the NCP is first available. EMA commented that it continues to support EPA's use of the CPI to adjust NCPs for inflation. However, EMA added that the CPI may not always reflect accurately the changes in fuel costs for medium and heavy-duty diesel engines. EMA suggested that a separate inflation index may be required to account for any dramatic shift in fuel prices. EPA remains willing to revisit this issue in the future if the need arises.

b. Joint Costs

The following assumptions were made in order to account for emissions averaging and/or joint costs in the control of two or more pollutants.

The values of COC_{50}, COC_{90} and MC_{50} are estimated as if all engines or vehicles in the NCP category are required to meet the NCP standard, whether or not emissions averaging is allowed. Thus, no specific allowance is made for emissions averaging in this approach.

The term "joint costs" is used to describe the costs attributable to a single control device or technique which simultaneously reduces emissions of two or more pollutants. It also describes the cost of controlling one pollutant when the cost depends on the degree of control of another pollutant. Where joint costs issues arise in the calculation of the parameters for the NCP formula, the general approach has been to calculate the cost of compliance with the NCP standard on the assumption that all pollutants for which NCPs are not available are controlled to their respective standards. Where NCPs are available for two pollutants, the cost of compliance for each pollutant is based on the assumption that manufacturers intend to comply with each of the two NCP standards.

EPA received comments on the issue of joint costs from EMA, MECA and NRDC. Specifically, these comments are directed to EPA's proposal on penalty rates for nonconformance with the 1987 LHDGE HC and CO standards, which EPA expects that most engines will meet with the use of a single catalyst control system. EPA proposed penalty rates that would have charged the full cost of a catalyst control system if any engine failed to meet either the HC or the CO standard and charged the cost of two catalyst control systems if any engine failed to meet both standards.

MECA and NRDC supported the proposal to base the penalties for nonconformance with regard to either HC or CO on the full cost of a catalyst and related equipment required to meet each standard independently, rather than on a half-cost basis of the single control system required to meet both standards. Both stated that the option selected by EPA will best ensure that conforming manufacturers are not placed at a competitive disadvantage.

EMA commented that EPA's proposal to separately cost HC and CO control systems was inconsistent with the approach EPA took when it set the HC and CO standards. EMA noted that during the standard-setting process, EPA determined that a single catalyst system would be needed in order for light heavy-duty gasoline engines to meet the 1987 HC and CO standards. EMA believes that EPA's approach of not splitting the costs for a single HC and CO control system would result in a "double charge" to manufacturers who fail to comply with both standards.

EPA proposed penalty rates for a CO catalyst control system and separate penalty rates for an HC catalyst control system because it was concerned that if the penalty rates were developed by splitting the costs for a single catalyst control system for both pollutants, as was done in the RIA for these standards, a manufacturer in nonconformance with only one of the two standards could pay a penalty lower than the true cost of compliance. This would occur when a manufacturer was able to meet one standard without the use of any catalyst control system at all; because meeting the second standard would require a catalyst control system. Charging NCPs which reflect only half the cost of a catalyst control system would fail to recoup the savings to the manufacturer of the non-catlayst engine. However, the problem with the proposal, as EMA pointed out, is that a manufacturer that is in nonconformity with both pollutants will be faced with a "double charge" because each penalty will be based on a complete catalyst control system. Due to EMA's concern over a "double charge", EPA has re-examined the likelihood of a manufacturer's engine meeting one standard without the use of a catalyst control system. EPA has concluded that the likelihood of this control scenario is very small. Therefore, EPA does not believe that it is appropriate to "double charge" virtually all the time just to protect against a situation that is not likely to happen. Accordingly, EPA has revised the penalty rates for the 1987 LHDGE HC and CO standards to reflect a single catalyst control system, the cost of which will be evenly split for the two standards.

c. Parameter values

The derivation of each of the following cost parameters is described in detail in a support document entitled "Development of Nonconformance Penalty Rates", which is available in the public docket for this rulemaking.

i. Light-Duty Diesel Trucks. The following values (in 1984 dollars) will be used in the NCP formula for the 1987 0.26 gram per mile particulate standard for heavy light-duty diesel truck configurations in the 6,001 to 8,500 pound GVW range.

COC_{50}=$368
COC_{90}=$541
MC_{50}=$3,200 per gram/mile
F=1.2

ii. Heavy-Duty Diesel Engines. The cost of meeting the 1988 HDDE NO_x and particulate standards varies significantly among engine families in the heavy-duty diesel engines class, and NCPs have therefore been set separately for the three HDDE subclasses; light HDDEs (LHDDEs), medium HDDEs (MHDDEs), and heavy HDDEs (HHDDEs).

NO_x

The following values (in 1984 dollars) will be used in the NCP formula for the 1988 6.0g/BHP-hr HDDE NO_x standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{50}	$18	$1,125	$1,278
COC_{90}	$41	$1,540	$1,980
MC_{50}	$49/g/BHP-hr	$883/g/BHP-hr	$1,733/g/BHP-hr
F	1.2	1.2	1.2

Particulate

The following values (1984 dollars) will be used in the NCP formula for the 1988 0.60 g/BHP-hr HDDE particulate standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{50}	$71	$84	$87
COC_{90}	$83	$97	$101
MC_{50}	$340/g/BHP-hr	$382/g/BHP-hr	$725/g/BHP-hr
F	1.2	1.2	1.2

iii. Heavy-Duty Gasoline Engines. The following values (1984 dollars) will be used in the NCP formulas for the 1987 LHDGE HC and CO emission standards of 1.1 g/BHP-hr and 14.4 g/BHP-hr, respectively.

		HC	*CO*
COC_{50}	=	$45	$45
COC_{90}	=	$95	$95
MC_{50}	=	$83/g/BHP-hr	4/g/BHP-hr
F	=	1.2	1.2

d. Consistent Use of Date

As part of the regulatory negotiation agreement concerning NCPs, it was agreed that the NCP analysis and RIA should be as consistent as reasonably possible, and that this goal could be achieved through consistent use of cost information, other data, and assumptions between the analyses.

It was further agreed that if an NCP rulemaking is preceded by the final rule for the corresponding emission standard, it would then be appropriate to use new information in the NCP analysis if better data becomes available.

In their comments on the NPRM, EMA stated that EPA had been inconsistent in the use of fuel consumption cost data, in that the data used for establishing NCPs were not the same data that were used for setting the standards. Specifically, EMA said that in calculating costs for the 1987 HDGE HC/CO NCP, EPA omitted a fuel consumption credit that was used in the HC/CO rulemaking. They stated that the 7–10 percent credit calculated in the Regulatory Support Document (RSD) for the 1987 standards would have resulted in a lifetime savings of $819–$1170 to the purchaser of a HDGE.[4] EMA said that by definition COC_{50} should include any owner/operator costs or savings, but EPA's omission of the fuel economy credit meant that COC_{50} would not reflect this savings, resulting in the calculation of a higher NCP than is justified.

EMA also stated that the fuel economy penalty used in the calculation of the 1988 HDDE NO_x NCP was different from the penalty presented in the rulemaking. The RIA for the rulemaking projected a fuel economy penalty of 0–2 percent, however, in calculating the NCP penalty EPA estimated a 0–4.3 percent fuel economy penalty, thus increasing the amount of the NCP. EMA claimed that the fuel economy penalty was revised upward based on a June, 1984 study by Christopher Weaver of Energy and Resource Consultants of Boulder, CO ("Weaver Study").[5] EMA maintained that the Weaver study information could have been used in the March, 1985 rulemaking but was not; therefore, it should not have been used in calculating the NCP.

EPA does not believe that the Agency has been inconsistent in the use of fuel economy costs/savings information in NCP calculations. The HDGE HC/CO fuel economy credit mentioned by EMA was never included in the cost calculations for either the original standards promulgated in 1979 or the revised standards referred to by EMA, which were promulgated in 1983. EPA recognized the potential for a fuel economy savings in the RIA supporting the 1979 rulemaking (RIA at 127), but noted that whether this potential was ever realized depended upon the technological approach to emission control utilized by the manufacturers.[6] Therefore, only a potential benefit was estimated, and it was never used in the cost effectiveness calculations. In any event, the interim non-catalyst standards promulgated in the 1983 rulemaking were based on the use of technology that would realize this benefit. Consequently, the benefit was gained under the interim non-catalyst standards, and was thus irrelevant in calculating either the cost of or NCPs for the 1987 catalyst standards (RSD at 1–34).

In the case of the NO_x NCP calculation, EMA erroneously understood that the revised fuel economy penalty information came from the June 1984 Weaver study. This information actually came from a letter dated January 30, 1985, from Weaver to an EPA contractor ("Weaver Memorandum").[7] This letter was dated well after the close of the comment period for the rulemaking, and in fact the information did not come to the Agency's attention until March, 1985, when the NO_x/particulate final rule was about to be published. Even though the data were received too late to be included in the standard-setting analysis, they represent the best available data for the NCP analysis, particularly since they are generally in agreement with EPA's estimate in the RIA and are at a level of detail which facilitates calculation of COC_{50} and COC_{90} estimates for the three HDDE subclasses.

Finally, as alluded to above, it is worthwhile noting that only the MHDDE fuel economy penalty fell outside EPA's original estimate of 0–2 percent. The LHDDE and HHDDE figures support EPA's RIA estimate, as does the average for the three subclasses. The following table summarizes the differences in the two estimates:

Subclass	RIA estimate (percent)	NPRM estimate (Sales-weighted average) (percent)
LHDDE	0–2	0
MHDDE	0–2	3.3
HDDE	0–2	1.5
Average	0–2	1.5

EPA therefore believes that use of the January 30, 1985 Weaver figures in the NCP analysis is appropriate and consistent with the regulatory negotiation agreement. In view of the above analysis, EPA does not consider EMA's argument of inconsistency in the application of fuel economy penalties or credits to be valid. The HDGE HC/CO fuel economy credit was never claimed in the final rulemaking support document for the standards and the HDDE NO_x fuel economy penalty was revised from the original RIA in accordance with the understanding expressed in the regulatory negotiation agreement.

Further, in their comments, EMA states that "the Weaver Memorandum utilized selected data from the Weaver Study." EMA also states that there are inconsistencies between the Weaver Study and the Weaver Memorandum, and cites as an example a difference in the fuel penalty estimated for Line-Haul Truck Engines.

First, the Weaver Memorandum does not appear to utilize selected data from the Weaver Study. The Memorandum

[4] "Regulatory Support Document Revised Gaseous Emission Regulations for 1985 and Later Model Year Heavy-Duty Engines," U.S. EPA, July 1983.

[5] "Preliminary Study of the Cost and Fuel-Consumption Effects of Alternative Heavy-Duty Diesel NO_x Standards," Final Report EPA Contract #68-01-6543, Work Order #50, Change 2, Energy and Resource Consultants, Inc., June 20, 1984.

[6] "Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," U.S. EPA, December 1979.

[7] Public Docket EN-85-02.

was written in conjunction with another project and is unrelated to the "Preliminary Study of the Cost and Fuel Consumption Effects of Alternative Heavy-Duty Diesel NO_x Standards." Second, the fuel penalty quoted by EMA from the study, 3.5–5.5%, arises from one set of data. Five data sets were presented. The data EMA selected was derived by the National Research Council/National Academy of Science NO_x Study Committee in 1981. It is not unreasonable that fuel penalty estimates developed in 1981 might differ from those developed independently in 1985.

EMA commented that EPA did not utilize all of the data supplied in the Weaver Memorandum. Seven subclasses are identified in that document, and EMA states that "EPA utilized only selected portions of this analysis in its NPRM." EMA objects to the fact that the LHDDE direct injection engine data was not utilized. EMA suggested that either the data should be sales-weighted, or separate classes should be created for indirect and direct injection light heavy duty engines. EMA states further that it was inappropriate to arrive at one "lump sum" NO_x fuel penalty estimate by sales-weighting the data for each of the MHDDE and HHDDE subclasses.

In response to EMA's comments, first, sales data indicate that approximately five percent of all LHDDE sales are direct injection engines. Sales-weighting the NO_x fuel penalty estimate for all LHDDEs results in an NCP which is not significantly different from that which is calculated from just those LHDDEs which are indirect injection engines (0.1% difference).

Second, EPA notes an apparent contradiction in EMA's comments, by suggesting that the data be sales-weighted for LHDDEs, but arguing that this method is inappropriate for MHDDEs or HHDDEs. However, as is discussed below, EPA believes that sales-weighting of the available fuel economy data is appropriate.

Third, EPA has determined that dividing the three subclasses of the HDDE category into smaller classifications is not a viable alternative at this time. Although NO_x fuel economy penalty information is available for smaller groups of engines, other cost data is not available for these smaller groups which would permit the development of separate NCPs. Given that the appropriate division of the HDDE class at this time is the division into three subclasses, some methodology must be developed for using the fuel economy data available. Taking a sales-weighted average of the data available is a reasonable way to develop a single estimate for the fuel economy component of COC_{50} for each HDDE subclass. By definition, COC_{50} represents the average cost of compliance. The aforementioned methodology provides an average cost of the NO_x fuel economy penalty.

However, to assure the accuracy of the sales-weighting calculations, EPA did update the sales percentages used for the sales-weightings within the three HDDE subclasses and included the direct injection engines in the LHDDE subclass as suggested by EMA. The resulting fuel economy penalties are as follows:

Subclass	*Sales-weighted average (percent)*
LHDDE	0.1
MHDDE	3.1
HHDDE	1.5
All HDDES[1]	1.5

[1] Weighted using 35% LHDDEs, 29% MHDDEs, and 36% HHDDEs.

Note that the sales-weighted average value for all HDDEs remains within EPA's original 0–2 percent estimate. These changes from the NPRM in NO_x fuel economy penalties are reflected in the revised COC_{50} and MC_{50} values for the three HDDE subclasses.

5. General NCP Provisions

This rule also includes a few general NCP provisions that were not fully addressed in the Phase I rulemaking.

EPA is requiring that a manufacturer place a label on each engine/vehicle (or make an addition to the existing label) for which an NCP is paid. The manufacturer will be required to begin labeling production engines/vehicles within 10 days after completion of the PCA. The label will contain the applicable compliance level for that engine/vehicle at the time of its introduction into commerce. This will allow EPA to easily associate every individual engine/vehicle with its proper compliance level, even if the compliance level is changed part way through the model year. If a manufacturer introduces engines/vehicles into commerce prior to the compliance level determination for that configuration, the manufacturer will be required to provide a label to each engine/vehicle owner (to be affixed to that engine/vehicle) containing the applicable compliance level. The manufacturer will be required to provide owners with the label within 30 days after completion of the PCA.

EPA stated in the proposal that it had requested a ruling from the Internal Revenue Service (IRS) on whether NCPs would be a tax deductible business operating expense. EPA has not received a decision from the IRS; however, the penalty rates that EPA has established are based on the assumption that the NCP will be a tax deductible business operating expense. If the IRS decides otherwise, EPA will issue a supplementary rulemaking to adjust the penalty rates to compensate for the nondeductibility of the NCP.

EPA proposed in the NPRM that manufacturers not be allowed to elect both NCPs and emissions averaging for use on the same engines/vehicles for the same pollutant because of the short time frame available to proceed with these regulations and the added complexity associated with applying NCPs to engines/vehicles which are in nonconformance with an averaging engine family emission limit. EPA indicated in the proposal that it would consider more specifically the technical and legal difficulties associated with incorporating NCPs into an averaging program in Phase III of the NCP rulemaking process. EMA supported EPA's decision to defer this complex matter until Phase III but urged EPA to initiate the Phase III rulemaking as soon as practicable and to consider all of the meritorious arguments in support of incorporating NCPs into an averaging program.

EPA also proposed in the NPRM to amend the administrative hearing procedures published in § 86.1115–87 during Phase I. Under the proposal, if a manufacturer elects an administrative hearing to contest an NCP assessment, EPA would impose interest on the challenged NCPs. EMA believed that EPA would "collect" the interest before the Agency renders its final decision in the hearing. EMA's comment is unwarranted. Under § 86.1113–87(g)(2) of the proposal and the final rule, the manufacturer is not required to pay the challenged NCP or any interest on it until after the Presiding Officer or the Administrator delivers the Agency's final decision in the hearing.

Since manufacturers must make NCP payments each quarter, based on that quarter's production of nonconforming vehicles or engines, interest will be calculated on each quarterly payment from the date it is due until the date the Presiding Officer or the Administrator renders the Agency's final decision. (In case of conflict, the cut-off date for interest calculation is the date on which the Agency delivers its final opinion, not when the hearing is deemed final for purposes of § 86.1115–87(y).) The interest rate for any particular quarterly payment will be the discount rate at auction (as quoted by the Secretary of the Treasury) for the last auction of six-month United States Treasury bills

settled immediately prior to the payment due date for that quarterly payment. This rate can be ascertained by calling the United States Department of the Treasury, Bureau of the Public Debt. For each quarterly payment outstanding on the date the Agency renders its final decision, the combined principal plus interest will be calculated according to the following formula:

$$QNCP\,(1+R)^{-2n}$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding

A manufacturer who pursues an administrative hearing must still make quarterly submittals of the information required by § 86.1113-87(g)(3).

EPA proposed in the NPRM that it would refund a portion of an NCP to a manufacturer that subsequently certifies as a replacement for the nonconforming configuration a configuration that is in conformance with the applicable standards and conducts a PCA that results in a compliance level below the applicable standards. EPA proposed this because engineering and development costs are included in the NCP, and EPA believes that a manufacturer that demonstrates that it has indeed expended these costs should be entitled to a monetary refund.

However, EPA did not propose that the entire engineering and development component of the NCP be refunded. Since a manufacturer that is eligible for such a refund expended the engineering and development costs at a later date, EPA believes that it is appropriate to subtract from the entire component an amount which reflects the manufacturer's financial benefit of delaying these costs. EPA proposed in the NPRM that 10 percent compounded annually be subtracted from the engineering and development component refund to reflect the time value of delaying these costs. EPA also proposed that an additional 20 percent per year of this component not be refunded to reflect the manufacturer's benefit of focusing its engineering and development efforts on the results already achieved by conforming manufacturers, but requested comments on whether it is appropriate to do so, and if so whether 20 percent per year is an appropriate amount.

CARB commented that it is not entirely convinced that the "belated achievements of applicable standards is prima facie evidence of research and development (R&D) expenditures," yet it agreed that refunds might be warranted in some instances. CARB recommended that EPA require some documentation of expenditures prior to any refund. EPA believes such a requirement would be difficult to administer and thus largely ineffective. Instead, EPA considers emission testing an adequate source of proof of engineering and development expenditures. With regard to the size of the refund, CARB supported EPA's proposal to withhold 10 percent and 20 percent, annually, to compensate for the time value of money and the benefit of a focused engineering and development horizon.

NRDC voiced "strong misgivings" regarding any refund of the NCPs. It argued that not only are refunds not due, but that the issue of refunds was never broached in the negotiations. If refunds are to be made, NRDC stated that it "strongly opposes" the implementation of any formula more lenient than that proposed by EPA.

EMA, on the other hand, contended that NCPs should not contain an engineering and development component in the first place. It maintained that, in order to stay in business, engine manufacturers will be required to conduct engineering and development to avoid rapidly increasing nonconformance penalties. Assuming that the engineering and development component is a necessary element of the NCP, EMA agreed that a refund of that component upon the manufacturer's conformance to standards would be appropriate. It objected, however, to any reduction in the refund to reflect the time value of money. EMA submitted that since the NCP is paid to EPA, it is EPA which enjoys the use and time value of the money, not the manufacturers.

With regard to the focusing of efforts reduction, EMA stated that it "recognizes the merits" of this concept, but could suggest no method of quantifying the advantage gained by manufacturers who borrow technology from precursors. EMA did submit that the proposed 20 percent per year reduction "appears very high" in that it suggests that a manufacturer could conform without conducting any engineering and development of its own within five years simply by making use of available technology. EMA contended that this time estimation is not realistic and urged EPA to re-evaluate the level proposed and provide documentation on how it was developed.

MECA agreed that refunding a portion of the engineering and development costs is appropriate in that it provides nonconforming manufacturers with an incentive to meet the standards as soon as possible. Although it agreed in principle that it is appropriate for EPA to refund only a portion of the engineering and development costs to reflect any economic benefit the nonconforming manufacturer may have received as a result of delaying the expenditure of these costs, MECA offered no guidance in translating these theories into an appropriate refund reduction formula.

EPA does not agree with EMA's comment that the NCP should not contain an engineering and development component in the first place. EPA is required by the Act to ensure that conforming manufacturers are not placed at a competitive disadvantage by allowing a nonconforming manufacturer to pay an NCP. If EPA did not include engineering and development costs in the NCP, a situation could occur where a manufacturer elects to pay NCPs until it discontinues the nonconforming engine or vehicle. Therefore, EPA must include this component in the NCP to meet the requirements of the Act.

EPA also disagrees with EMA's comment that nonconforming manufacturers should not be charged interest on the engineering and development component of the NCP because it is EPA that has the use of that money. In fact, nonconforming manufacturers will in most cases have benefited from putting off the expense of engineering and development. The nonconforming manufacturer only pays the engineering and development component of the NCP on each engine or vehicle when it is introduced into commerce. Therefore, the manufacturer is spreading out these NCP costs over time. Furthermore, a conforming manufacturer will most likely have spent its engineering and development costs several years before the effective date of the standard, while a nonconforming manufacturer may only spend those costs after that date. EPA has therefore decided to retain the time value of money figure at 10 percent compounded annually as proposed.

While EPA received support for a reduction of the potential engineering and development component refund to reflect a manufacturer's "focusing of efforts," none of the commenters supporting this concept provided EPA with any method of quantifying this apparent advantage. Without an adequate basis for predicting the value of "focusing of efforts", EPA does not believe that it is appropriate to charge nonconforming manufacturers for that component. In addition, it is not certain that in every case a nonconforming manufacturer will be significantly helped by other manufacturers' efforts because heavy-duty engines vary widely in configuration, usage and durability.

For these reasons, EPA will not reduce the refund by an amount to reflect the manufacturers focusing of engineering and development efforts. EPA will therefore only reduce the refund to reflect the time value of money.

Based on 10 percent compounded annually for the time value of money, the following percentages of the engineering and development component will not be refunded:

Model year	1	2	3	4	5	6	7	8
Not refunded (%)	10	21	33	46	61	77	95	100

After the seventh model year, the manufacturer will no longer be eligible for a refund of engineering and development costs.

EPA proposed in the NPRM that the engineering and development component of the NCP payment would be payable to EPA and the remaining portion of the NCP payment would be payable to the United States Treasury. EPA proposed that both payments would be sent to EPA's Manufacturers Operations Division and it would place the engineering and development amount into an escrow account so that it could potentially be refunded to the manufacturer. Due to administrative reasons to allow for potential refunds, EPA will now require that only one payment be made, which will consist of both components of the penalty. The entire penalty amount will be payable to: U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251.

EPA will transfer funds to the United States Treasury when the manufacturer becomes ineligible for a refund of those funds.

The engineering and development component of the NCP is calculated by multiplying the following factors by the penalty calculated from the NCP formula: (These factors represent the percentage of the engineering and development costs in relationship to COC_{50}.)

1987 LDDT particulate: 0.11
1987 HDGE HC: 0.06
1987 HDGE CO: 0.06
1988 LHDDE NO_x: 0.36
1988 MHDDE NO_x: 0.02
1988 HHDDE NO_x: 0.02
1988 LHDDE particulate: 0.64
1988 MHDDE particulate: 0.62
1988 HHDDE particulate: 0.60

D. Administrative Designation

Under Executive Order 12291, the Administrator has determined that this regulation is not "major" and therefore not subject to the requirement that a Regulatory Impact Analysis be prepared. This determination is based on the following:

(1) The NCP program will not result in an annual adverse effect on the economy of $100 million or more. NCPs merely provide an economically reasonable alternative to other possible actions, at least as costly as NCPs, that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the Economic Impact section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers with relief from the current prohibition against selling nonconforming HDEs or HDVs. Presently, a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards has only two alternatives: fix the nonconforming configuration or prevent its introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent the HDE or HDV's introduction into commerce. NCPs provide relief from these disruptions. In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantage stemming from nonconformance. Therefore, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Final Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

E. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emission standards. If no HDE or HDV manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce upon payment of a penalty a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

F. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are available and that they will be used for less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current

levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Because the emission impacts of NCPs are anticipated to be very small, if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time no specific air quality impact analysis has been made regarding this rule.

G. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small business entities. None of the affected entities could be classified as a small business. Even if some were considered small, there would not be a substantial number of those. Moreover, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, I certify that this rule will not have a significantly adverse economic impact on a substantial number of small entities.

H. Information Collection Requirements

The rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this rule have been approved by OMB.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, reporting and recordkeeping requirements. Air pollution control, Environmental protection, gasoline, Motor vehicles.

Dated: December 23, 1985.

Lee M. Thomas,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the preamble, Part 86, Subparts A and L, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 206(g) and 301, Clean Air Act, as amended, 42 U.S.C. 7525(g), 7601.

2. Paragraph (h) of § 86.087-35 of subpart A is added as follows:

§ 86.087-35 Labeling.

* * * * *

(h)(1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113-87(b) shall have the following information printed on the label required in paragraph (a) of this section or on a separate permanent legible label in the English language and located in proximity to the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the PCA.

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is ————." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112-87(a).)

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112-87(a), it shall provide the engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

3. Section 86.1105-87 of Subpart L is added as follows:

§ 86.1105-87 Emission standards for which nonconformance penalties are available.

(a) Effective in the 1987 model year, NCPs will be available for the following emission standards:

(1) Diesel light-duty truck (rated in excess of 6,000 pounds GVWR) particulate emission standard of 0.26 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(A) COC_{50}: $368

(B) COC_{90}: $541

(C) MC_{50}: $3,200 per gram per vehicle mile

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11.

(2) Gasoline-fueled heavy-duty engine hydrocarbon emission standard of 1.1 grams per brake horsepower-hour for engines intended for use in vehicles rated up to 14,000 pounds GVWR.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(A) COC_{50}: $45

(B) COC_{90}: $95

(C) MC_{50}: $83 per gram per brake horsepower-hour

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.06

(3) Gasoline-fueled heavy-duty engine carbon monoxide emission standard of 14.4 grams per brake horsepower-hour for engines intended for use in vehicles rated up to 14,000 pounds GVWR.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(A) COC_{50}: $45

(B) COC_{90}: $95

(C) MC_{50}: $4 per gram per brake horsepower-hour

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.06

(b) Effective in the 1988 model year, NCPs will be available for the following emission standards:

(1) Diesel heavy-duty engine oxides of nitrogen emission standard of 6.0 grams per brake horsepower-hour.

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(*1*) COC_{50}: $18

(*2*) COC_{90}: $41

(*3*) MC_{50}: $49 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.36

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(*1*) COC_{50}: $1125

(*2*) COC_{90}: $1540

(*3*) MC_{50}: $883 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.02

(iii) For heavy heavy-duty diesel engines:

(A) The following value shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $1278

(2) COC_{90}: $1980

(3) MC_{50}: $1733

(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.02

(2) Diesel heavy-duty engine particulate emission standard of 0.60 grams per brake horsepower-hour.

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $71

(2) COC_{90}: $83

(3) MC_{50}: $340 per gram brake horsepower-hour

(4) F: 1.2

(5) UL: 0.80 grams per brake horsepower-hour

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.64

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $84

(2) COC_{90}: $97

(3) MC_{50}: $382 per gram per brake horsepower-hour

(4) F: 1.2

(5) UL: 0.80 grams per brake horsepower-hour

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.62

(iii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $87

(2) COC_{90}: $101

(3) MC_{50}: $725 per gram per brake horsepower-hour

(4) F: 1.2

(5) UL: 0.80 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.60

(c) The values of COC_{50}, COC_{90} and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index.

4. In § 86.1113–87 of Subpart L paragraph (g) is revised and (h) is added to read as follows:

§ 86.1113–87 Calculation, payment and refund of penalty.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid by the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. The penalty shall be payable to: U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251.

(2) When a manufacturer has requested a hearing under § 86.1115–87, it must pay the nonconformance penalty, and any interest, within ten days after the Presiding Officer renders his decision, unless the manufacturer first files a notice of intention to appeal to the Administrator pursuant to § 86.1115–87(t)(1), or, if an appeal of the Presiding Officer's decision is taken, within ten days after the Administrator renders his decision, unless the manufacturer first files a petition for judicial review.

(3) A manufacturer making payment under paragraphs (g)(1) or (g)(2) of this section shall submit the following information by each quarterly due date to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The following information shall also accompany each payment:

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations, if applicable.

(ii) The following statement and endorsement:

This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

_____

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

(4) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(3) of this section.

(h) A manufacturer that certifies as a replacement for the nonconforming configuration a configuration in conformance with applicable standards and performs a PCA in accordance with § 86.1112–87(a) that results in a compliance level below the applicable standard will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development component will be determined by multiplying the penalty amount by the factor for the appropriate subclass and pollutant in §86.1105–87. The amount refunded will depend on which model year the certification and PCA take place and will be as follows:

(1) In the first model year that the NCP is available, 90 percent of the engineering and development component will be refunded.

(2) In the second model year that the NCP is available, 79 percent of the engineering and development component will be refunded.

(3) In the third model year that the NCP is available, 67 percent of the engineering and development component will be refunded.

(4) In the fourth model year that the NCP is available, 54 percent of the engineering and development component will be refunded.

(5) In the fifth model year that the NCP is available, 39 percent of the engineering and development component will be refunded.

(6) In the sixth model year that the NCP is available, 23 percent of the engineering and development component will be refunded.

(7) In the seventh model year that the NCP is available, 5 percent of the engineering and development component will be refunded.

(8) In the eighth and subsequent model years that the NCP is available, none of the engineering and development components will be refunded.

5. Paragraph (z) of § 86.1115–87 of Subpart L is revised and new paragraph (aa) is added to read as follows:

§ 86.1115–87 Hearing procedures for nonconformance determinations and penalties.

* * * * *

(z) *Interest on NCPs.* (1) Interest shall be assessed on any nonconformance penalty for which payment has been withheld pursuant to § 86.1113–87(g)(2).

Interest shall be calculated from the due date for the first quarterly NCP payment, as determined under § 86.1113–87(g)(1), until the date on which the Presiding Officer or the Administrator renders the final decision of the Agency.

(2) The combined principal plus interest on each quarterly NCP payment withheld pursuant to § 86.1113–87(g)(2) shall be calculated according to the following formula:

$QNCP\ (1+R)^{.25n}$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding

(3) The number of quarters for which payment is outstanding for purposes of this paragraph shall be the number of quarterly NCP payment due dates, as determined under § 86.1113–87(g)(1), which have elapsed before the decision of the Agency under this section.

(4) The interest rate applicable to a quarter for purposes of this paragraph shall be the coupon issue yield equivalent (as quoted by the Secretary of the Treasury) of the average accepted auction price for the last auction of twenty-six week United States Treasury bills settled immediately prior to the quarterly NCP payment due date on which the payment was originally due.

(aa) *Judicial review.* (1) The Administrator hereby designates the General Counsel of the Environmental Protection Agency as the officer upon whom any copies for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

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Federal Register

Tuesday
December 31, 1985

Part V

Department of Energy

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Notice

DEPARTMENT OF ENERGY

Office of Hearings and Appeals Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from a fund of $27,000,000 obtained from Mobil Oil Corporation in settlement of enforcement proceedings and litigation brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by May 1, 1986, should conspicuously display a reference to case number HEF-0508, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of settlement between Mobil Oil Corporation and the DOE. The consent order entered in the case settled all disputes between DOE and Mobil concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period March 1973 through January 1981, and its sales of crude oil during the period June 1979 through January 1981.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by May 1, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: December 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 24, 1985.

Name of Firm: Mobil Oil Corporation.
Date of Filing: August 20, 1984.
Case Number: HEF-0508.

The Economic Regulatory Administration (ERA) has filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) requesting that OHA formulate and implement special procedures to distribute the proceeds of an April 19, 1984 consent order between the DOE and Mobil Oil Corporation (Mobil). This consent order settled all issues, with certain enumerated exceptions, regarding the firm's regulated refined product operations during the period January 1, 1973 through January 27, 1981, and its regulated crude oil operations during the period June 1, 1979 through January 27, 1981 (hereinafter referred to as the consent order period). In exchange for ERA's agreement not to pursue enforcement actions against the firm, Mobil remitted $27 million to the DOE. Those funds have been deposited into an escrow account under the jurisdiction of the DOE pending instructions from OHA regarding their distribution. The escrow account is an interest-bearing account, and as of October 31, 1985, the Mobil funds available for distribution total $31,153,743.09.

On July 30, 1985, we issued a Proposed Decision and Order setting forth the procedures that we had tentatively decided to use in distributing the Mobil settlement fund. The Proposed Decision was published in the **Federal Register** on August 9, 1985. *See* 50 FR 32271 (August 9, 1985) (hereinafter cited as Proposed Decision). In the Proposed Decision, we established a 30-day period for the submission of comments. 10 CFR 205.282(b). That period has expired, and we have received comments from twelve parties representing a broad range of interests. Representatives of trade associations and consumers as well as state governments and a retail gasoline station operator have presented their views and suggestions. Many of the comments were quite helpful, and this decision reflects a number of the commenters' suggestions.

In the present determination we shall briefly outline the background of this proceeding and summarize our July 30 Proposed Decision. Next we will discuss the comments that we received regarding the overall course of action that we tentatively adopted. Then we will examine the comments that addressed specific details of the procedures we proposed. Finally, we shall set forth the refund procedures that we have decided to adopt. This Decision and Order will be published in the **Federal Register**, 10 CFR 205.282(c), and persons will have 90 days from the date of publication in which to submit refund applications. 10 CFR 205.283(b).

I. Background

A. The Consent Order

Mobil is a major, integrated refiner that produced and sold crude oil and a complete slate of petroleum products during the period of federal price controls (1973 to 1981). It was therefore subject to the Mandatory Petroleum and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the controls period, ERA and its predecessor agencies conducted extensive audits of Mobil's operations and, as a result of those audits, contended in the course of a number of judicial and administrative proceedings that Mobil had violated certain applicable DOE price and allocation regulations in its sales of crude oil and petroleum products. On April 19, 1984, ERA and Mobil signed a consent order that settled all issues regarding the firm's compliance with DOE price and allocation regulations during the consent order period, with certain noted exceptions.[1]

On April 25, 1984, ERA published notice of the consent order in the **Federal Register**, as required by the DOE regulations at 10 CFR 205.199J(c). *See* 49 FR 17,920 (April 25, 1984). ERA considered the numerous comments that

[1] An earlier consent order between Mobil and the DOE resolved issues concerning Mobil's compliance with DOE crude oil regulations during the period September 1, 1973 through May 31, 1979. *See* Consent Order, ¶ 305, 49 FR 17920, 17926 (April 25, 1984). The issues exempted from the second consent order relate generally to: (a) issues or claims concerning the subject matter before the courts in:

(i) Mobil Oil Corp. v. DOE, No. 81-CV-340 (N.D.N.Y.);

(ii) In re the DOE Stripper Well Litigation, MDL No. 378 (D. Kan.); and

(iii) Exxon v. DOE and 341 Tract Unit of the Citronelle Field, No. 81-25 (D. Del.);

(b) entitlement obligations that may be modified or imposed in the future;

(c) possible violations of DOE regulations by Mobil regarding crude oil resale transactions; and

(d) possible violations of DOE crude oil regulations by General Crude Oil Company during the period before it became affiliated with Mobil.

See Consent Order, ¶ 501, 49 FR at 17926-27 (April 25, 1984).

it received concerning the consent order and concluded that it should adopt the order, with minor technical modifications, as a final consent order. *See* 49 FR 30,354 (July 30, 1984).

B. The Proposed Refund Procedures

On August 20, 1984, the ERA filed a Petition for Implementation of Special Refund Procedures with OHA. In the July 30, 1985, Proposed Decision, we noted jurisdiction over the Mobil consent order fund and set forth the special refund procedures we had tentatively determined to adopt.[2] In that decision, we proposed to set aside a small portion of the consent order fund for potential claims based on crude oil sales by Mobil during the period June 19, 1979 through January 27, 1981, and concluded that this portion of the fund should properly be subject to the DOE's recently announced Statement of Restitutionary Policy for certain Entitlements-period crude oil overcharges. *See* 50 FR 27,400 (July 2, 1985); *see also* 50 FR 27,402 (July 2, 1985).

We also proposed that the remainder of the consent order fund be made available for distribution to purchasers of Mobil refined petroleum products during the consent order period who were injured by Mobil's practices. 10 CFR 205.280; *see Denny Klepper Oil Co. v. DOE*, 598 F. Supp. 527 (D.D.C. 1984). In formulating the proposed refund procedures, we examined publicly available information, information in the Mobil audit files, and proprietary data collected by the DOE's Energy Information Administration. Based on an analysis of that information, together with our long observation of the industry and our experience in analyzing refund claims in other proceedings, we proposed various findings and presumptions concerning the alleged overcharge by Mobil and the injury experienced by various purchasers of Mobil products.

These presumptions were both general and product-specific. First, the procedures included a "volumetric presumption," under which the effects of Mobil's alleged violations are presumed to have been spread evenly over each gallon of covered refined product sold. We also proposed presumptions that spot purchasers and consignee agents did not experience any injury and would therefore be ineligible to receive refunds, and that small purchasers of Mobil products generally absorbed the alleged Mobil overcharges and need not submit any additional proof of injury if their claims are for a refund less than $5,000. We also proposed to adopt a presumption that end-users (ultimate consumers) of Mobil refined products were injured by Mobil's alleged violations.

In addition we proposed specific presumptions to be applied to claims filed by purchasers of Mobil motor gasoline. Having found that Mobil's prices for motor gasoline products at the various levels of distribution closely tracked national average prices for the consent order period, presumptions based on these prices were suggested to apportion the injury sustained by Mobil motor gasoline purchasers among the various levels of distribution. An applicant that elected to base its refund claim on these level-of-distribution presumptions would have to furnish only its name and address, proof of its Mobil motor gasoline purchases, and its level in the distribution chain. Any claimant that believed it was entitled to more than the presumptive level of injury could file additional material to document that claim. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

In the Proposed Decision we also stated that we had insufficient data to make level-of-distribution presumptions for products other than motor gasoline. The Proposed Decision described the information we had obtained concerning these other Mobil products and solicited suggestions as to how those data, or other data that commenters may possess, could serve as reliable bases for findings, such as the motor gasoline level-of-distribution presumptions, for other refined products. We noted that in the absence of data sufficiently detailed to give rise to specific factual findings which could be used to develop presumptions, an applicant would be required to demonstrate that it was injured by the alleged Mobil overcharges, unless the total amount of its claim was less than $5,000. Finally, we stated that we would not propose any procedures for second-stage refunds, i.e. the distribution of any remaining consent order funds after all meritorious claims of purchasers of Mobil products have been paid.

II. Comments on the Overall Procedures

A number of parties filed comments on the overall framework of the proposed procedures outlined above. We shall discuss those comments first. However, most of the comments we received concerned the presumptions set forth in the Proposed Decision. Our analysis of the comments will therefore focus upon this aspect of the refund procedures.

A. First Stage Procedures

The comments we received concerning the first stage of the proposed Mobil special refund proceeding may be divided into two categories: those that treated the factual presumptions we proposed to make available to all applicants, and those regarding specific terms of the consent order and specific factual situations. We will address the more general comments first and then progress to the more specific comments.

The general presumptions we described in the Proposed Decision were intended to be available to applicants for refunds regardless of the specific product (excluding crude oil) on which they would be basing their claim. We have received no comments regarding most of them—e.g., the "volumetric" presumption, the presumption of no injury for consignee agents, and the presumption of injury for regulated industries and agricultural cooperatives. Consequently, we shall adopt these without modification in the final procedures. We did, however, receive comments regarding the "spot purchaser" presumption, the "end-user" presumption, and the general concept of adopting presumptions of injury in lieu of requiring additional proof of injury from each individual claimant. Each of these comments will be discussed in turn.

The National Council of Farmers Cooperatives (NCFL) requests that agricultural cooperatives be exempted from the general presumption that spot purchasers of refined petroleum products and NGLs suffer no injury from alleged regulatory violations. In support of this position, the NCFC cites *Husky Oil Co.*, 13 DOE ¶ 85,045 at 88,114 n.3 (1985). As that case specifies, agricultural cooperatives may receive refunds in this proceeding for spot purchases, but only to the extent a cooperative sold the products involved to its member-owners. *See, e.g., Arcone Oil Co./Agway Inc.*, 13 DOE ¶ 85,058 at 88,152 (1985).

The Air Transport Association of America—the trade association of domestic scheduled airlines—seeks clarification regarding the extent to which an end-user is required to establish injury. The Proposed Decision suggested a presumption that all end-users of Mobil products were injured. Any end-user of any Mobil product (other than motor gasoline) may rely on this presumption and need not submit

[2] None of the comments received questions the jurisdiction of the Office of Hearings and Appeals to formulate and implement special refund procedures in this case. We therefore adopt the discussion of jurisdiction contained in the Proposed Decision.

further proof of injury, provided the business activity involved was not subject to the DOE price regulations. *See, e.g., Gulf Oil Corp./Kerr-McGee Corp.*, 13 DOE ¶ 85,204 (1985).

The State of California questions the propriety of permitting any applicant to substitute presumptions of injury for actual, individualized proof of injury. It maintains that presumptions may not be employed to replace the applicant's burden of proving it was injured, but rather may be employed only after that determination has been made.

California's position is not suggested by the regulations. The Subpart V regulations specify:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). This section and the relevant portion of the preamble to the Subpart V regulations clearly permit the adoption of presumptions that facilitate the refund process by promoting efficient, effective and equitable distribution of refunds to injured persons. *See* Fed. Energy Guidelines, Regulations Preambles 1974–1981, ¶ 40,408 at 40,979–43. That is exactly what the presumptions we are adopting are intended to accomplish.

In a separate submission, the State of New Jersey and the Commonwealth of Pennsylvania concur with California in contending that Subpart V should provide restitution to persons who have been unjustly deprived of property or its value, and that those persons are by definition ultimate consumers, whose share of the refund is reduced each time injury is presumed rather than proven in an application. This position misunderstands the nature of the presumptions we proposed to adopt. Those presumptions are based on our years of experience in dealing with the petroleum industry and on factual findings resulting from our analysis of extensive data in refund proceedings. They do not find injury where none exists. Instead, they confirm our previous experience—namely, that the impact of a particular refiner's alleged overcharges was felt at all levels of the petroleum marketing chain. These States' position that the impact was felt only by ultimate consumers is not consistent with that experience, and they have not submitted any evidence whatsoever that would support it.

The Petroleum Marketers Association of America (PMAA) addresses the presumption of injury for small claims. In response, we wish to clarify that that presumption does not apply to applicants whose claims are based on motor gasoline purchases. Moreover, the $5,000 limit on the presumption of injury for small claims includes all refunds sought. For example, an applicant that claims a refund of over $5,000 based on motor gasoline purchases may not also take advantage of the small-claims presumption in a refund claim based on purchases of other Mobil products.

The PMAA also requests that we make findings and adopt presumptions based on those findings that would assist refund applicants basing claims on alleged motor gasoline allocation violations. The PMAA maintains that Mobil was not allocating motor gasoline to its purchasers in accordance with the DOE allocation regulations. It bases this assertion on information contained in a memorandum that it received from the DOE's Office of Special Counsel pursuant to a Freedom of Information Act request. That memorandum states that two of the eleven largest refiners in the United States were allocating products in a manner similar to the other nine but were not apparently experiencing the same supply shortfalls as the others. These two firms were not identified in the memorandum, nor was the reason for this apparent dichotomy identified. Through statistical analysis, the PMAA attempts to demonstrate that these two refiners were not complying with the allocation regulations and that one of the two allegedly non-complying firms was Mobil. We have carefully examined these comments, but we do not find the material a sufficient basis for making a factual finding that would support a new presumption. Nor did the Office of Special Counsel, with knowledge of the same information, determine that the same data indicated non-compliance, and it apparently took no enforcement action against any of the eleven refiners. As a result, no special rules for allocation claims will be developed, and the precedents established in other refund proceedings involving allocation claims will generally apply. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982).

The remainder of the comments received pertaining to first-stage procedures are more specific in their focus. For example, Union Carbide Corporation requested clarification that natural gas liquids are indeed a product on which a refund claim may be based in this proceeding. The firm is correct. Any product purchased from Mobil during the consent order period that was covered by the Mandatory Petroleum Price and Allocation Regulations may form the basis for a claim, but only for the period during which it was covered by those regulations. Accordingly, since NGLs were subject to the regulations from March 6, 1973 through January 27, 1981, refund claims may be based on the volume of NGLs purchased from Mobil during that period. *But see Pioneer Corp./Phillips Petroleum Co.*, 13 DOE ¶ 85,175 at 88,473 n.2 (1985) (ethane volumes excluded from natural gas liquid product purchases). The dates of price and allocation controls for each product are set forth below in Section V, "How To Apply for a Refund."

The State of Illinois requested that we include in our special refund procedures confirmation that Mobil will assist applicants in identifying the volumes they purchased directly from the firm. Mobil has been extremely cooperative in its dealings with OHA, and we anticipate that it will continue to provide assistance in this proceeding, as the consent order provides. We will, however, require that applicants make every effort to obtain their purchase volumes from their own records or other sources. Mobil's assistance may be sought only if this material is not available. On a case-by-case basis we may request a refund applicant to submit a statement of its efforts in this regard prior to requesting Mobil's assistance.

The final comment regarding first-stage procedures was received from the former operator of a Mobil gas station in California. This commenter argued in favor of his receiving a refund larger than one based on the proposed volumetric refund amount. Although it would be inappropriate to rule on the validity of this potential applicant's claim at this time, we reiterate that all presumptions, including the volumetric presumption explained above, are rebuttable.

Finally, we note that no comments were received that addressed our solicitation of suggestions for obtaining or reinterpreting data concerning products other than motor gasoline. Consequently, for all other products, we will adopt the proposed refund procedures without modification.

B. Second Stage Procedures

The comments concerning this area of the proposed procedures—that is, the distribution of indirect restitution after all refunds based on purchases of Mobil products have been made—were received from representatives of state governments and groups of states.

However, we did not propose any plan of indirect restitution in this proceeding, and do not intend to at this juncture. Therefore, any discussion of this issue is premature.

III. Comments on the Procedures for Crude Oil Claims

Some comments addressed our proposed procedures for distributing consent order funds attributable to alleged violations of the crude oil regulations. In general, they challenge the DOE Statement of Restitutionary Policy that was published in the **Federal Register** on July 2, 1985. 50 FR 27400 (July 2, 1985).

A submission received from Mobil, however, while opposing the adoption of the Policy Statement in Subpart V proceedings in general, contends that the issue should be considered irrelevant to the present proceeding. Because we found in our Proposed Decision that no significant issues in the Consent Order concerned the crude oil regulations, it maintains that we could exclude all crude oil claims in this proceeding.

In the Proposed Decision we stated, "ERA indicates that a small portion of the alleged overcharges might be attributable to alleged crude oil tier violations during the [consent order] period." Proposed Decision, 50 FR 32273 n.4. We have re-examined the allegations of the Proposed Order of Disallowance and the various Proposed Remedial Orders that were settled by the April 19, 1984 consent order. We have now determined that the vast majority, if not all, of the alleged crude oil violation relate to alleged overstatements of landed costs in interaffiliate transfers of crude oil. This type of alleged violations did not involve a tier miscertification and therefore its impact was not spread among all domestic refiners by the Entitlements Program, 10 CFR 211.67 (1981).

In view of the foregoing, we will eliminate the proposed refund pool for crude oil applicants and combine that money with the rest of the consent order fund. This money will be available to purchasers of Mobil refined products during the consent order period. The comments challenging the proposed application of the DOE Restitutionary Policy Statement are therefore irrelevant to this proceeding.

IV. Comments on the Procedures for Motor Gasoline Claims

In our Proposed Decision, we established rebuttable presumptions for purchasers of Mobil motor gasoline based on their positions in the chain of product distribution. Under this mechanism, an applicant would need to provide only proof of the volume of its motor gasoline purchases from Mobil and would be eligible for a refund calculated as follows: (i) Purchase volume times (ii) presumed level of injury times (iii) the volumetric (per-gallon) refund. In the alternative, any applicant could present evidence that it should receive a refund larger than one based on these presumptions. If, however, an applicant submits evidence that, although intended to support a larger, non-presumption-based claim, instead fails to demonstrate the requisite injury, no refund will be granted. This is because the level-of-distribution presumptions are based on general factual findings; if an individual applicant's record contains evidence contrary to those presumptions, we cannot ignore that evidence.[3]

Comments received regarding the level-of-distribution presumptions for motor gasoline purchasers fell into two categories: those that challenged the method used for developing the presumptions and those that presented refinements of the proposed method. The first group of comments, concerning the appropriateness of using the proposed methodology at all, were submitted by the State of California and purport to rely on the Report of the Office of Hearings and Appeals in *Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed July 21, 1985); 50 FR 27,400 (July 2, 1985); Fed. Energy Guidelines ¶ 90,507. Those comments urge that we reject any presumptions based on an analysis of profit margins, together with other factors, in favor of the type of marginal economic analysis that is set forth in the OHA Stripper Well Report.

We will not adopt the suggestions set forth in the comments discussed above, since the analysis set forth in the OHA Stripper Well report is inapplicable to this case. The marginal economic analysis contained in that report focused on the impact at the refiner level of crude oil cost increases that were dispersed throughout the entire domestic refining industry through the operation of the Entitlements Program, 10 CFR 211.67 (1981). The evidence presented in that case did not address the situation of overcharges committed only by a single refiner. Nor did it address cost increases faced only by an individual firm and the impact of those increases on its downstream customers. Therefore, California has not shown that the conclusions based on marginal economic analysis should be extended to this case.

We also received comments from the PMAA and Energy Watch, Inc., a representative of individual retailers, that suggest a number of technical modifications to the methodology we proposed for establishing level-of-distribution presumptions for purchasers of Mobil motor gasoline. Examples of the type of modification suggested include using a different month for beginning the analysis (we started with July 1975, the first month for which we have data), using a different measure of significance for profit margin declines (we determined that a decline of less than one-tenth of one cent was insignificant during the last 13 months of the period), and considering the possibility of partial absorption and partial passthrough in a given month (we determined that if jobbers and/or retailers suffered injury in a month, consumers absorbed no injury in that month). Each of these suggested changes, if adopted, would result in additional refunds to the groups proposing them.

For the reasons explained below, we have decided not to adopt most of the modifications suggested by the two marketer groups. They do not refine or simplify the presumptions we have proposed. They in assence attempt to recalculate the presumed levels of injury in the gasoline marketing chain by reinterpreting the price and volume data referred to in the Proposed Decision. Those data formed part of the basis for our proposed presumptions, but other factors were also considered in making those judgments, including concerns of equity and administrative efficiency, our intimate knowledge of the industry and our experience in prior refund proceedings. Not surprisingly, each adjustment they seek would increase the share of the motor gasoline refunds available to the jobbers and retailers who suggested them, and decrease the funds available for other claimants, notably consumers. The proffered adjustments would *not*, however, create presumptions that are more accurate or reliable, nor would they increase the level of sophistication of the underlying analytical judgments. For example, the adjustments urged by the PMAA are mostly expressed in terms of mathematical manipulations which would purportedly improve the accuracy of our calculations. But this approach ignores the fact that the calculations

[3] We acknowledge that this position represents a departure from the position we maintained in several *Amoco* refund determinations. *See e.g.*, Standard Oil Co. (Indiana)/Miller's Standard, 12 DOE ¶ 85,124 (1984); Standard Oil Co. (Indiana)/John Coconato, 11 DOE ¶ 85,121 (1983).

themselves are part of an integrated judgment rather than an econometric analysis which can stand alone. As the United States District Court for the District of Columbia has noted, "Restitutions is never an exact science." *S.O.S. Gasoline Enterprises, Inc. v. DOE*, No. Civil 80-3277, Fed. Energy Guidelines ¶ 26,321 (D.D.C. July 8, 1981).

Two proposed modifications of our suggested presumptions should be made. These modifications, like those we have rejected, do require adjustment of the percentages of the presumptions of injury. They differ from the others, however, in that their adoption *would* increase the accuracy of our presumptions. In each case, the proponents have correctly indicated that our analysis was based on inaccurate assumptions and we will modify our analysis and its resultant presumptions of injury accordingly.

The PMAA correctly pointed out that the injury findings made in *Amoco* for motor gasoline retailers, which was based on an analysis of data for the period July 1975 through December 1979, are not applicable in this proceeding. In that case, a presumption of injury was established based upon analysis that showed that Amoco retailers were injured in 21 of the 53 months analyzed. However, 15 of those 21 months were considered months in which injury occurred for reasons based in part on the fact that Amoco's prices to retailers at those times were "more consistently higher than the national average prices than during any other portion of the consent order period which we examined." *Amoco*, 10 DOE at 88,212. Therefore, the 15 months in question were determined to be months of retailer injury not entirely because of the national average price data, but rather in part due to Amoco-specific information. Clearly, the determination in *Amoco* regarding these 15 months cannot be directly applied to this proceeding. We have reviewed the Mobil and national average price data available on sales to retailers and cannot draw a similar conclusion regarding Mobil's prices to retailers for the same period. Consequently, we conclude that retailers of Mobil motor gasoline were not injured during that 15-month period. Nevertheless, our analysis set forth in the Proposed Decision confirms that retailers were injured in six months during the 53-month period July 1975 through December 1979,[4] and the presumption of injury will be adjusted accordingly. The resulting recalculations of retailer injury are set forth below in Section V, "How To Apply for a Refund."

The second modification that we will make to our motor gasoline findings is based on comments we received from the PMAA and Energy Watch. As proposed, the level-of-distribution presumptions drew no distinctions between jobbers who sold to retailers and jobbers who sold directly to motorists and other end-users, nor between retailers who purchased motor gasoline through jobbers and those who purchased directly from Mobil. The commenters have stated that the vast mojority of motor gasoline passes from Mobil to motorists and other consumers through only one intermediate supplier and rarely through both jobber and retailer. Mobil has verified this contention. Telephone conversation between Gail F. Schulz, Senior Attorney, Mobil Oil Corporation, and William Schwartz, Staff Attorney, OHA, October 17, 1985. Consequently, we have created additional level-of-distribution presumptions (see Section V.B. below) for distributors and retailers who purchased Mobil products directly from Mobil and sold directly to end-users.[5] These new presumptions have been derived from calculations made in the same manner as all other level-of-distribution presumptions, that is, by analyzing months in which profit margins diminished.

V. How To Apply for a Refund

The information that refund applicants should furnish is set forth below. In Appendix A we have set forth a suggested format that applicants will find useful in organizing the required information. We will, however, accept all applications that contain the necessary information.

A. All Applicants

1. Each applicant for refund should begin with the caption "Application for Mobil Refund" and the case number, HEF-0508. Applicants should print or type all information.

2. Each applicant should furnish the name and address it was using during the consent order period, January 1, 1973 through January 27, 1981. If the applicant was a business firm, it should furnish any and all other names under which it had operated during the consent order period, or for whatever shorter period for which the claim is being filed.

3. The application for refund should contain the name, address and telephone number of the person who prepared the application, as well as the name, address and telephone number of a "contact person" who is familiar with the facts set forth in the application, if different. Unless otherwise specified, the refund check will be issued to the "contact person."

4. Each application should set forth the name, address and telephone number of the supplier who sold the applicant the volumes of Mobil product for which a claim is being filed. If the supplier was a reseller, the applicant should state whether the reseller was supplied directly by Mobil. If the product was purchased directly from Mobil, the applicant's customer identification number and its sales representative's name and telephone number should be provided. If the product was not Mobil-branded, the applicant should explain why it believes that the purchased volumes were Mobil product.

5. The application should include a list of purchase volumes, by month and by product, for all gallons for which a refund claim is being made. This volume figure should include only volumes purchased while the particular product was subject to federal price controls during the consent order period. Therefore, claims may be filed only for purchases made after March 6, 1973 and before the date of decontrol for a particular covered product. The covered products and their dates of decontrol are listed below:

Item	Decontrolled
Motor gasoline and NGLs	January 27, 1981.
Butane and natural gasoline	January 1, 1980.
Aviation gas and jet fuel	March 1, 1979.
Naphthas and naphtha-based jet fuel.	September 1, 1976.
Middle distillates	July 1, 1976.
Residual fuel and related products	June 1, 1976.

All grades of motor gasoline may be combined when reporting monthly volumes of motor gasoline. Monthly volumes of all other products should be reported separately. The volumes should be reported in gallons, not in dollars paid for the product. No invoices need be submitted with the application; however, the applicant should keep its supporting material in a convenient place at least until it has received its refund. We regularly make spot checks of applications, as well as request

[4] Actually, retailers were injured in 12 months. However, in those months injury occurred also at the jobber level. We have therefore apportioned one-half of the injury during the 12-month period to retailers and one-half to jobbers.

[5] We will not, however, create a different presumed level of injury for jobbers who sold directly to motorists through their own retail outlets. Although they may have incurred marginally higher costs than the retailers with whom they were in direct competition, they were able to purchase motor gasoline at lower prices. Jobbers who retailed gasoline may elect the appropriate level-of-distribution presumption.

documentation in certain cases, and we may request copies of invoices or other more detailed supporting material in any case.

6. The application should state the total gallonage for which a refund is being requested. Refund applications for amounts less than $15.00 will not be processed. We will dismiss all refund applications that, after we have computed the refund amount due the applicant, result in a refund of less than $15.00. As we noted in the Proposed Decision, it is extremely unlikely that individual motorists made sufficient purchases of motor gasoline to warrant a refund at or above the $15.00 level. *See* Proposed Decision, 50 FR 32276. Consequently, individual motorists will in all probability not be able to qualify for a refund.

7. The applicant should report whether it is or has been involved as a party in DOE enforcement actions or private damage actions under section 210 of the Economic Stabilization Act of 1970. If an action has terminated, the applicant should furnish a copy of any final order issued in the matter. If an action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

8. The application must contain a signed statement that the applicant swears (or affirms) that all of the information furnished in the application is true and accurate to the applicant's best knowledge, and that the signer understands that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both. *See* 18 U.S.C. 1001.

9. A copy of the application will be made available for public inspection in our Public Docket Room. If there is confidential information in an application, the applicant should submit the original application and two copies of a version with all confidential information deleted. If the application does not contain any confidential information, the applicant should submit one copy in addition to the original.

10. Each application must be postmarked no later than May 1, 1986.

B. Motor Gasoline Claims

The information that a motor gasoline applicant should submit in addition to that listed above will depend upon whether it elects to have its application analyzed using the presumption applicable to it. The formula for calculating a refund using the presumption method is as follows:

Amount of refund = Applicant's purchase volumes × Applicable level-of-distribution presumption percentage × Volumetric amount ($.000388 per gallon) [6]

The following chart lists the applicable level-of-distribution presumptions of injury:

Level of distribution	Percentage of injury
Non-commission wholesalers:	
Selling to retailer	35
Selling to others (except motorists)	45
Retailers:	
Supplied through wholesaler	20
Supplied directly by Mobil	30
Consumers:	
Supplied through intermediate supplier(s)	60
Supplied directly from Mobil	100

The above presumptions represent the presumptions described in the Proposed Decision as modified in Part IV of this Decision and rounded for ease of administration. A motor gasoline claimant that elects to use these presumptions in filing an application for refund needs supply only the following information:

1. The information listed under "All Applicants."

2. A statement that the applicant elects to use the presumption method for calculating injury and its refund.

3. The claimant's applicable level-of-distribution percentage, or a statement that the claimant is unable to determine its level of distribution.

An applicant for a motor gasoline refund that does not elect to take under the presumptions must demonstrate that it was injured by the alleged overcharges. Applicants that fail to make that showing will in any event receive the presumption level of refund.[7]

The information that the wholesaler or retailer applicant must supply for us to analyze its application is as follows:

1. The information listed under "All Applicants."

2. A statement that the applicant does *not* elect to use the presumption method to calculate its injury and its refund.

3. The applicant's monthly, non-cumulative "banks" of unrecouped increase of product costs, from November 1973 through July 14, 1979 for retailers and through April 30, 1980 for wholesalers. *See Champlain Oil Co.*, 13 DOE ¶ 85,119 at 88,329 n.2 (1985) (banking provision for retailers eliminated); *Tenneco Oil Co./United Oil Marketers*, 12 DOE ¶ 85,051 at 88,155 n.3 (banking requirement for resellers eliminated).

4. If the applicant had only one supplier, the application should list by month the volume of product and the prices at which the applicant purchased and sold the Mobil motor gasoline. For example: May 1975, purchased product at 34.4 cents per gallon and resold it at 38.0 cents per gallon.

5. If the applicant had more than one supplier, the application should include the names of those suppliers, the volumes purchased from each supplier during each month of the refund period, the monthly prices paid to each supplier and the price at which the product was sold.

6. The claimant should also state where the price information supplied for Item 4 or 5 came from (i.e., books, invoices, etc.) and indicate where those records are located.

C. Claims Based on Other Products

In addition to the information listed under "All Applicants," an applicant for refund based on Mobil products other than motor gasoline must submit evidence to establish that it was injured by the alleged overcharges. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.[8]

Another method a claimant may use to establish that it absorbed the alleged overcharges is to submit the information listed as Items 1 through 6 for non-presumption-type motor gasoline claimants. However, certain types of applicants need not make the demonstration of injury described above. These groups of applicants include end-users (that is, applicants that do not resell the refined products they purchase), regulated industries (such as public utilities) and agricultural cooperatives. In addition, applicants for refunds of less than $5,000 exclusive of interest, need not submit any additional evidence of injury beyond the volumes of Mobil products purchased.

[6] This figure is derived by dividing the $27 million settlement amount by Mobil's sales volume of controlled refined products during the consent order period (69,671,310,000 gallons). To this amount will be added a proportionate share of the accrued interest in the Mobile escrow account.

[7] Due to the rebuttable presumptions of non-injury with respect to consignee agents and spot purchasers, applicants in these categories will *not* receive refunds based on the motor gasoline level-of-distribution injury presumptions if they fail to establish injury. *See* Proposed Decision, 50 FR 32274.

[8] Large purchasers of NGLs should supply appropriate market survey data. *See* National Helium Corp./Atlantic Richfield Co., 11 DOE ¶ 85,257 (1984).

D. Claims Based on Alleged Allocation Violations

Allocation claimants should furnish all of the information listed under "All Applicants" except for Item 5. For this item, allocation claimants should instead furnish information as to the circumstances under which the alleged Mobil obligation to supply arose, the volumes not offered to the applicant, and the injury suffered by the applicant as a result (e.g., lost profits due to inability to obtain substitute products, losses caused by purchasing higher-priced products, etc.). Allocation claimants should previously and contemporaneously have complained about the alleged allocation violation by filing a complaint with the DOE, a state agency, or a state or federal court. This previous complaint should be described in the application.

VI. Conclusion

In the foregoing determination we have reviewed the refund procedures that we tentatively adopted in our July 30, 1985 decision in light of the written comments we received during the 30-day comment period. We discussed all of the comments and made adjustments to our proposed methodology where warranted. We have concluded that we should adopt as final the first-stage procedures set forth in the present Decision and Order. We shall set May 1, 1986, as the deadline for filing applications for refund for a portion of the Mobil settlement fund, a date more than 90 days after the expected **Federal Register** publication of this Decision and Order. *See* 10 CFR 205.283(b).

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Mobil Oil Corporation pursuant to the consent order executed on April 19, 1984 may now be filed.

(2) All applications must be postmarked no later than May 1, 1986.

Dated: December 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

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APPENDIX A

APPLICATION FOR MOBIL REFUND--HEF-0508

1. Information on applicant at time of purchases:
   Name(s): _____
   Address: _____
   _____
   Type of applicant (retailer, end-user, jobber): _____

2. Information on contact person (who will receive refund made payable to applicant above unless specified otherwise):
   Name: _____
   Current Address: _____
   _____
   Telephone Number: ( ) _____

3. Information on person who prepared application (if different)
   Name: _____
   Address: _____
   _____
   Telephone Number: ( ) _____

4. Total gallonage for which refund requested (combined total of all schedules per Item 11): _____

5. Were you supplied by Mobil directly? ____ Yes ____ No. If yes, please provide information on sales representative in Item 6 and provide Mobil customer number here: _____

6. Information on applicant's supplier:
   Name: _____
   Address: _____
   _____
   Telephone Number: ( ) _____

7. FOR MOTOR GASOLINE CLAIMS ONLY:
   Do you elect the presumption method for calculating injury and your refund? ____ Yes ____ No. If not, please consult Decision for requirements. If yes, what level-of-distribution percentage do you claim? (Check one below.)

   Non-commission wholesalers
   ____ -- selling to retailer (35%)
   ____ -- selling to others (except to motorists) (45%)
   Retailers
   ____ -- supplied through wholesaler (20%)
   ____ -- supplied directly by Mobil (30%)
   Consumers
   ____ -- supplied through intermediate supplier(s) (60%)
   ____ -- supplied directly from Mobil (100%)

8. Was the product you bought Mobil-branded? ____ Yes ____ No. If not, please attach an explanation why you believe that the product came from Mobil.

9. If you were a reseller, were you at any time between 1973 and 1981 a consignee agent? ____ Yes ____ No. If yes, when were you a consignee agent? From _____ to _____.

10. Have you been a party or are you currently a party in a DOE enforcement action or private § 210 action? ____ Yes ____ No. If yes, please attach an explanation (see Decision for details).

11. On attached schedule please provide purchase volumes of Mobil products for each month of the period for which you claim a refund. Do not include any purchases of products after their date of decontrol (see below). Attach a separate schedule for each product on which you base your claim. You may, however, combine volumes of all grades of motor gasoline on a single schedule. Volumes of products may be included if they were purchased after March 6, 1973 and before:

Item	Decontrolled
Motor gasoline and NGLs	January 27, 1981
Butane and natural gasoline	January 1, 1980
Aviation gas and jet fuel	March 1, 1979
Naphthas and naphtha-based jet fuel	September 1, 1976
Middle distillates	July 1, 1976
Residual fuel and related products	June 1, 1976

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure.

_____ Date

_____ Signature of Applicant

_____ Title

MONTHLY PURCHASE VOLUMES FOR _____ (product)

Name of Applicant: _____

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******								
February	*******								*******
March									*******
April									*******
May									*******
June									*******
July									*******
August									*******
September									*******
October									*******
November									*******
December									*******
Yearly Total									

GRAND TOTAL FOR THIS PRODUCT: _____

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LIST OF PUBLIC LAWS

Last List December 27, 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. 2391 / Pub. L. 99-211

To authorize the Administrator of General Services to collect additional contributions of money provided to him by private individuals or organizations for the Nancy Hanks Center. (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 2542 / Pub. L. 99-212

Designating the building located at 125 South State Street, Salt Lake City, Utah, as the "Wallace F. Bennett Federal Building". (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 2698 / Pub. L. 99-213

To designate the United States Courthouse in Tucson, Arizona, as the "James A. Walsh United States Courthouse". (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 2903 / Pub. L. 99-214

To designate the Federal Building and United States Post Office located in Philadelphia, Pennsylvania, as the "Robert N.C. Nix, Sr., Federal Building and United States Post Office". (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 3003 / Pub. L. 99-215

To authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland-National Capital Park and Planning Commission. (Dec. 26, 1985; 3 pages) Price: $1.00

H.R. 3718 / Pub. L. 99-216

District of Columbia Revenue Bond Act of 1985. (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 3837 / Pub. L. 99-217

Sentencing Reform Amendments Act of 1985 (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 3914 / Pub. L. 99-218

To preserve the authority of the Supreme Court Police to provide protective services for Justices and Court personnel. (Dec. 26, 1985; 1 page) Price: $1.00

H.J. Res. 495 / Pub. L. 99-219

To provide for the temporary extension of certain programs relating to housing and community development, and for other purposes. (Dec. 26, 1985; 3 pages) Price: $1.00

S.J. Res. 189 / Pub. L. 99-220

Designating the week beginning January 12, 1986, as "National Fetal Alcohol Syndrome Awareness Week". (Dec. 26, 1985; 2 pages) Price: $1.00

S. 1728 / Pub. L. 99-221

Cherokee Leasing Act (Dec. 26, 1985; 2 pages) Price: $1.00

LIST OF ACTS REQUIRING PUBLICATION IN THE FEDERAL REGISTER, 1984

Additions to Table III, February 17, 1984 through November 8, 1984

This table lists the subject matter, public law number, and citations to the U.S. Statutes at Large and U.S. Code for those acts of the second session of the 98th Congress which require Federal agencies to publish documents in the **Federal Register.**

Table III appears in the CFR Index and Finding Aids volume revised as of January 1, 1986.

Description of Act	*Citation*
Paiute Indian Tribe of UT, lands in trust	Public Law 98-219; 98 Stat. 11; 25 U.S.C. 766 note.
Shipping Act of 1984	Public Law 98-237; 98 Stat. 72; 46 U.S.C. app. 1705.
Pueblo de Cochiti, lands in trust	Public Law 98-344; 98 Stat. 315.
Bon Secour National Wildlife Refuge, additional lands	Public Law 98-347; 98 Stat. 321.
Deficit Reduction Act of 1984	Public Law 98-369; 98 Stat. 514; 26 U.S.C. 168; 98 Stat. 524; 26 U.S.C. 168; 98 Stat. 925; 26 U.S.C. 103 note; 98 Stat. 1080; 42 U.S.C. 1395ww; 98 Stat. 1087; 42 U.S.C. 1395h, 1395u.
Christopher Columbus Quincentenary Jubilee Commission	Public Law 98-375; 98 Stat. 1262.
Education for Economic Security Act	Public Law 98-377; 98 Stat. 1282; 20 U.S.C. 3972.
Hoover Power Plant Act of 1984	Public Law 98-381; 98 Stat. 1337; 43 U.S.C. 619a.
Illinois and Michigan Canal National Heritage Corridor Act of 1984	Public Law 98-398; 98 Stat. 1457; 16 U.S.C. 461 note.
Box Elder County, UT, land conveyance	Public Law 98-401; 98 Stat. 1477; 25 U.S.C. 307 note.
Zuni Indian Tribe, land conveyance	Public Law 98-408; 98 Stat. 1534.
Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985.	Public Law 98-411; 98 Stat. 1558.
Drug Price Competition and Patent Term Restoration Act of 1984	Public Law 98-417; 98 Stat. 1592; 21 U.S.C. 355; 98 Stat. 1599, 1600; 35 U.S.C. 156.
California Wilderness Act of 1984	Public Law 98-425; 98 Stat. 1621, 1622; 16 U.S.C. 1131 note; 98 Stat. 1627; 98 Stat. 1632; 16 U.S.C. 543.
Florida Wilderness Act of 1983	Public Law 98-430; 98 Stat. 1667.
Older Americans Act of 1984	Public Law 98-459; 98 Stat. 1770; 42 U.S.C. 3016.
National Cooperative Research Act of 1984	Public Law 98-462; 98 Stat. 1818; 15 U.S.C. 4305.
Continuing appropriations for fiscal year 1985, and for other purposes	Public Law 98-473; 98 Stat. 1873; 98 Stat. 1874; 98 Stat. 2084; 42 U.S.C. 3746; 98 Stat. 2087; 42 U.S.C. 3763; 98 Stat. 2116; 42 U.S.C. 5635; 98 Stat. 2129; 42 U.S.C. 5776.
Federal Timber Contract Payment Modification Act	Public Law 98-478; 98 Stat. 2215; 16 U.S.C. 618.
Lincoln County, NV, land withdrawals	Public Law 98-485; 98 Stat. 2262.
National Archives and Records Administration Act of 1984	Public Law 98-497; 98 Stat. 2294; 44 U.S.C. 3303a.
Marine Sanctuaries Amendments of 1984	Public Law 98-498; 98 Stat. 2299, 2300; 16 U.S.C. 1434.
Old Age Assistance Claims Settlement Act	Public Law 98-500; 98 Stat. 2317, 2318; 25 U.S.C. 2303.
Education Amendments of 1984	Public Law 98-511; 98 Stat. 2392; 25 U.S.C. 2001.
Department of Defense Authorization Act, 1985	Public Law 98-525; 98 Stat. 2590; 10 U.S.C. 2303a; 98 Stat. 2656; 22 U.S.C. 4605.
Veterans' Dioxin and Radiation Exposure Compensation Standards Act	Public Law 98-542; 98 Stat. 2728, 2729; 38 U.S.C. 354 note; 98 Stat. 2732; 38 U.S.C. 219 note.
Motor Vehicle Theft Law Enforcement Act of 1984	Public Law 98-547; 98 Stat. 2759; 15 U.S.C. 2024.
Wetlands Loan Act, extension	Public Law 98-548; 98 Stat. 2775; 98 Stat. 2777.
Motor Carrier Safety Act of 1984	Public Law 98-554; 98 Stat. 2835; 98 Stat. 2840; 49 U.S.C. app. 2509; 98 Stat. 2850; 49 U.S.C. 10530.
Chattahoochee River National Recreation Area, OR	Public Law 98-568; 98 Stat. 2928; 16 U.S.C. 460ii-1.
Trade and Tariff Act of 1984	Public Law 98-573; 98 Stat. 3004; 19 U.S.C. 2412; 98 Stat. 3005; 19 U.S.C. 2413; 98 Stat. 3021; 98 Stat. 3022; 19 U.S.C. 2464.
Small Business and Federal Procurement Competition Enhancement Act of 1984.	Public Law 98-577; 98 Stat. 3076; 41 U.S.C. 418b.
Wyandotte Tribe of Oklahoma, use and distribution of funds	Public Law 98-602; 98 Stat. 3150.
Atlantic Striped Bass Conservation Act	Public Law 98-613; 98 Stat. 3190; 16 U.S.C. 1851 note.
The Hazardous and Solid Waste Amendments of 1984	Public Law 98-616; 98 Stat. 3232; 42 U.S.C. 6924; 98 Stat. 3251; 42 U.S.C. 6921.
Trademark Clarification Act of 1984	Public Law 98-620; 98 Stat. 3337; 42 U.S.C. 10701; 98 Stat. 3356; 17 U.S.C. 914.
Antarctic Marine Living Resources Convention Act of 1984	Public Law 98-623; 98 Stat. 3400; 16 U.S.C. 2434.