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Monday
March 25, 1985

Selected Subjects

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303 and 308

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; Rules of Practice and Procedures

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final amendment to existing regulations.

SUMMARY: FDIC is amending its regulations (1) to authorize its Board of Review to issue a directive to a nonmember banking institution that fails to maintain capital at or above the minimum capital requirement established by FDIC, to issue a notice of assessment of civil money penalty against an institution or its official that fails to comply with such a directive in violation of the International Lending Supervision Act of 1983, and to enter into certain written agreements; and (2) to authorize its Executive Secretary to issue an order to terminate, by consent, the deposit insurance of a bank that has ceased to accept deposits other than trust funds. The amendment redesignates the legal officer with certain authority to take specified action in certain enforcement proceedings. Finally, the amendment corrects certain technical errors and omissions in FDIC's rules of practice and procedures and conforms those rules with this amendment to Part 303.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: James L. Meador, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550—17th Street NW., Washington, D.C. 20429 (202) 389–4171.

SUPPLEMENTARY INFORMATION: The amendment described below is designed to improve the operations of the FDIC's enforcement procedures, including delegation of certain new enforcement authority and authority to act in connection with certain uncontested cases.

Section 908 of the International Lending Supervision Act of 1983 (Title 9 of the Domestic Housing and International Recovery and Financial Stability Act, 12 U.S.C. 3907 (Supp. I 1984)) directs that each appropriate federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions. The statute provides that each appropriate federal banking agency may issue a directive to a banking institution that fails to maintain capital at or above its required level. FDIC's Board has adopted regulations implementing procedures to issue such directives. This amendment delegates authority to FDIC's Board of Review to issue capital maintenance directives in accordance with the minimum capital requirements established at §§ 325.3 and 325.4 of FDIC's rules and regulations (50 FR 11128, March 19, 1985). This amendment also delegates authority to FDIC's Board of Review to issue notices of assessment of civil money penalties against banks and individuals who violate such directives, and provides a procedural framework to conduct a hearing on the evidence supporting the assessment of a civil money penalty for violating FDIC's capital directive.

The amendment delegates authority to the Executive Secretary to issue consent orders to terminate deposit insurance for insured banks that have ceased to take any deposits other than trust funds (12 U.S.C. 1818(p)). Such orders are almost always issued pursuant to the request of the subject banks and, therefore, do not involve adversarial issues.

The FDIC has established the Office of the Deputy General Counsel for Regional and Corporate Affairs and has assigned that office responsibility for prosecution of enforcement cases under sections 7, 8 and 18 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1818 and 1828). The amendment changes the designated officer with delegated authority in this area to reflect this administrative reorganization.

Finally, the amendment corrects certain technical errors and omissions in FDIC's rules of practice and procedures and conforms those rules with this amendment to Part 303.

Regulatory Factors

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is inoperative here because the amendment does not impose recordkeeping or reporting burdens on any member of the public. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board of Directors hereby certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

The changes amend rules of FDIC internal organization, procedure and practice. Therefore, in accordance with the Administrative Procedure Act ("APA") (5 U.S.C. 553), the Board of Directors may waive notice of proposed rulemaking and public comment, and the Board of Directors has determined good cause exists for making the rules immediately effective.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, banking.

12 CFR Part 308

Administrative practice and procedures, Claims, Courts, Equal access to justice, Lawyers, Penalties.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Part 303 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 303 is amended to read:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. No. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 86–463, 74 Stat. 129; sec. 2, Pub. L. No. 87–827, 76 Stat. 953; Pub. L. No. 88–593, 78 Stat. 940; Pub. L. No. 89–79, 79 Stat. 244; sec. 1, Pub. L. No. 89–356, 80 Stat. 7; sec. 12(c), Pub. L. No. 89–485, 80 Stat. 242; sec. 3, Pub. L. No. 89–597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. No. 89–695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90–505, 82 Stat. 856; secs. 6(c)(7), (12), (13), Pub. L. No. 95–369, 92 Stat.

616–620; title III, secs. 306, 309 and title VI, sec. 602, Pub. L. No. 95–630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829); title I, sec. 108, Pub. L. No. 90–321, 82 Stat. 150 as amended by title IV, sec. 403 Pub. L. No. 93–495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. No. 96–221, 94 Stat. 171 (15 U.S.C. 1607).

2. Section 303.13(o) is amended by changing each reference therein to the officer designated as "Deputy General Counsel for Open Bank Regulatons and Supervision" to "Deputy General Counsel for Regional and Corporate Affairs."

3. Section 303.13(o)(4) is amended by adding an ultimate sentence to read as follows: "The Board of Review, in its discretion, may compromise, modify, or remit the amount of any penalty assessed pursuant to this paragraph."

4. Section 303.13(o)(9) is amended by inserting "or section 910(d) of the International Lending Supervision Act of 1983" after "section 106(b) of the Bank Holding Company Act."

5. Section 303.13(o) is amended by adding new paragraphs (10), (11) and (12) to read as follows:

§ 303.13 Other delegations of authority.

* * * * *

(o) *Initiation, processing and disposition of administrative enforcement proceedings.* * * *

(10) *Issuance of directive to achieve and maintain adequate capital.* The Board of Review is hereby delegated authority to issue a directive to a banking institution that fails to maintain capital at or above the minimum capital requirement for insured state-chartered banks that are not members of the Federal Reserve System, as established at §§ 325.3 and 325.4(b) of FDIC's rules and regulations. The Board of Directors expressly retains all authority with respect to any action taken or proposed to be taken by the FDIC pursuant to § 325.4(c) of FDIC's rules and regulations.

(11) *Assessment of civil money penalty for violation of capital maintenance directive.* The Board of Review is hereby delegated authority to issue a notice of assessment of civil money penalty against any insured nonmember bank or its official for any violation of any provision of chapter 40 of title 12 of the United States Code, or any rule, regulation, or order issued thereunder by the FDIC.

(12) *Acceptance of written agreements.* The Board of Review is hereby delegated authority to accept or enter into on behalf of the FDIC any written agreement with an insured bank, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank, pertaining to any matter which may be addressed by the FDIC pursuant to section 8(b) of the Federal Deposit Insurance Act.

6. Section 303.13 is amended by adding a new paragraph (p) to read as follows:

§ 303.13 Other delegations of authority.

* * * * *

(p) *Issuance of order to terminate deposit insurance under 12 U.S.C. 1818 (p).* The Executive Secretary is hereby delegated authority to issue a consent order terminating the insured status of an insured banking institution that has ceased to engage in the business of receiving deposits other than trust funds, as defined in section 8(p) of the Federal Deposit Insurance Act; provided that any action by the Executive Secretary taken under this paragraph shall be with the concurrence and upon the recommendation of the Director of the Division of Bank Supervision, or his designee, and the Duputy General Counsel for Regional and Corporate Affairs, or his designee.

PART 308—RULES OF PRACTICE AND PROCEDURES

Part 308 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 308 reads as follows:

Authority: Sec. 2(9), Pub. L. No. 797, 64 Stat. 881 (12 U.S.C. 1819); sec. 18, Pub. L. No. 94–29, 80 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. No. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. No. 96–481, 94 Stat. 2325 (5 U.S.C. 504).

2. Section 308.07(b)(9) is amended by removing the word "decide" and inserting in its place the word "grant".

3. Section 308.07(b) is amended by adding a new paragraph (12) to read as follows:

§ 308.07 Conduct of hearings.

* * * * *

(b) *Authority of administrative law judge.* * * *

(12) To disqualify himself or herself by motion made by a party or on his or her own motion where he or she has a financial interest in any of the parties or a relationship with a party that would make it inappropriate for him or her to act.

* * * * *

4. Section 308.07 is amended by redesignating paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) as (e), (f), (g), (h), (i), (j), (k), and (l) respectively, and by adding a new paragraph (d) to read as follows:

§ 308.07 Conduct of hearings.

* * * * *

(d) *Separation of functions.* No officer, employee, or agent of the FDIC engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the administrative law judge, except as a witness or counsel in the proceeding.

* * * * *

§ 308.59 [Amended]

5. Section 308.59 is amended by changing "15 days" to "30 days".

§ 308.64 [Amended]

6. Section 308.64(a) is amended by removing the period at the end of the last sentence and adding ", or (4) any provision of chapter 40 of title 12 of the United States Code, or any rule, regulation, or order issued thereunder by the FDIC."

7. Section 308.65 is revised to read as follows:

§ 308.65 Violation of order or directive as grounds for assessment.

If, in the opinion of the Board of Directors, an insured nonmember bank or its official has violated any final order issued pursuant to section 8(b) or 8(c) of the Federal Deposit Insurance Act and subpart D, or any provison of chapter 40 of title 12 of the United States Code, or any rule, regulation, or order issued thereunder, the Board may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day during which such violation continues.

13. Section 308.81 is amended by revising the last sentence to read as follows:

§ 308.81 Hearing.

* * * The provisions of the Administrative Procedure Act (5 U.S.C. 554–57) and subpart B shall apply to the hearing.

By direction of the Board of Directors, 18th of March, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–6946 Filed 3–22–85; 8:45 am]

BILLING CODE 6714–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 612

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board ("Federal Board"), is amending its regulations relating to standards of conduct for directors, officers, and employees of Farm Credit System ("System") institutions. The regulations delete or modify several existing regulatory provisions to enable System institutions to exercise greater discretion in administering matters involving their business relationships with their agents consistent with good business practices. The regulations will provide adequate measures to aid in safeguarding the interests of System institutions and their member/borrowers, without unduly infringing upon the rights of System agents or placing undue administrative burdens on System institutions.

EFFECTIVE DATE: Thirty days from this publication date, provided either or both Houses of Congress are in session. Notice of the effective date will be published.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On December 10, 1984, FCA noticed and published for comment proposed amendments to 12 CFR Part 612 (49 FR 48051-48053) concerning the FCA standards of conduct regulations pertaining to agents of System institutions. The amendments to these regulations were initiated as a result of inquiries and suggestions received by the FCA from various segments of the System on this topic. The major areas of concern submitted to the FCA have centered on practical obstacles to applying and enforcing the provisions of the regulations applicable to agents and possible undue regulatory infringements on the rights of agents. The Federal Board reaffirms that System institutions need to exercise safe and sound business practices in their relationships with agents, but that, in general, the regulations governing agents should not proscribe particular activities.

Two parties commented on § 612.2150, Employees—prohibited acts. One commentator expressed opposition to permitting employees to serve on boards of cooperatives that borrow from the district bank for cooperatives. The commentator believed the potential for conflicts would be very high because the employee could easily violate his/her fiduciary duties or divulge confidential System information. The second commentator believes there is a conflict between § 612.2150 paragraphs (b)(1), which prohibits employees from deliberating on matters affecting their interests or the interests of an entity they control, and (b)(6) of the proposed regulations, which would permit a bank for cooperatives employees to serve on the board of a cooperative that borrows from the employing institution. As discussed below, the final regulation resolves this issue. However, it should be noted that there is no conflict between paragraph (b)(1) and proposed paragraph (b)(6). Proposed paragraph (b)(6) would permit an employee to serve on the board of a cooperative while paragraph (b)(1) would prohibit the employee from deliberating on matters affecting that cooperative. The first paragraph permits the relationship while the second paragraph prohibits the employee from deliberating matters involving that relationship.

The Federal Board has reevaluated this issue and believes the concerns of the commentators regarding potential conflicts of interest are valid and should be addressed. Accordingly, the regulation has been modified to prohibit an employee of a bank for cooperatives from serving on the board of a cooperative that borrows from the employing institution. The Federal Board believes this modification will alleviate concerns relating to employee fiduciary duties and adverse criticism that might stem from an employee's participation in the decisionmaking process of a cooperative.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, Banking, Conflict of interest, Government employees.

PART 612—PERSONNEL ADMINISTRATION

As stated in the preamble, Part 612 of Chapter VI, Title 12 of the Code of Federal Regulation is amended as follows:

1. Section 612.2130 is amended by revising paragraphs (a) and (g) to read as follows:

§ 612.2130 Definitions.

For purposes of this subpart, the following terms are defined:

(a) "Agent" means any person, other than a director or employee, who represents the System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

* * * * *

(g) "Employee" means any salaried officer or part-time, full-time, or temporary salaried employee.

* * * * *

2. Section 612.2150 is amended by revising paragraph (b)(6) to read as follows:

§ 612.2150 Employees—prohibited acts.

* * * * *

(b) * * *

(6) Shall not serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity, and does not include transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing System institution, an employee of a Federal land bank, Federal intermediate credit bank, or association may serve as a director of a cooperative which borrows from a bank for cooperatives. Boards, prior to approving such employee requests, shall evaluate the potential of the employee's proposed directorship for violating any regulations contained in this subpart, with particular emphasis on the requirements of § 612.2190, Devotion of time to official duties.

* * * * *

3. Section 612.2200 is amended by revising paragraphs (a) and (c) to read as follows:

§ 612.2200 Soliciting support in election polls for association, district, service organization, or Federal Farm Credit Board membership.

(a) No employee or agent of a System institution shall take any part, directly or indirectly, in the designation of nominees for the Federal Farm Credit Board, or the nomination or election of members of a district, association, or service organization board, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such designations, nominations, or elections. These provisions shall not prohibit employees or agents from providing biographical and other information or engaging in other activities pursuant to the district policies and procedures for nominations

and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution of which the employee or agent is a voting member.

* * * * *

(c) No director, employee, or agent shall, for the purpose of furthering the interests of any candidate for nomination or election, furnish or make use of System records that are not made available for use by all declared candidates.

4. Section 612.2220 is amended by revising paragraph (a) as follows:

§ 612.2220 Political activity.

(a) No salaried officer or employee of a System institution shall hold public office or be a candidate for such office unless the bank by which he is employed or which supervises his employer has, after investigation and consideration of all facts involved, determined in writing that such candidacy or holding of public office would not bring justified criticism on the grounds of political activities or partialities or in any other manner adversely affect the best interests of the borrower or the operations and public image of the System or any institutions thereof. All determinations made hereunder shall be reported to the board of directors of the bank concerned.

* * * * *

5. Section 612.2240 is revised to read as follows:

§ 612.2240 Gifts of favors.

(a) No director or employee of any System institution shall solicit, give, or receive any gift or present from or to any director or employee of the employing or supervising institution or any supervised institution. This paragraph shall not apply to gifts of a nominal value traditionally exchanged as part of acceptable social amenities.

(b) No director or employee of any System institution shall at any time solicit or receive contributions from the institution's borrowers or loan applicants for a gift or present to any director or employee of a System institution.

6. Section 612.2250 is revised to read as follows:

§ 612.2250 Improper use of official property.

No director or employee of a System institution shall use the space, personal property, communication, transportation, or other facilities of a System institution for activities or business in such person's personal interest or the personal interest of another. This provision does not apply to the use of property, facilities, or resources pursuant to a lease or contract with the institution that is based on an agreement arrived at following arm's-length negotiations, and that is evidenced in a document setting forth the terms and conditions of such use. Official stationery shall be used only in the conduct of official business of the institution, and shall not be used to express opinions that do not represent the official views of the institution.

7. Section 612.2260 is amended by revising paragraphs (b) and (c) to read as follows:

§612.2260 Standards of conduct for agents.

* * * * *

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

(Secs. 5.9, 5.12, 5.18. Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252)

Donald E. Wilkinson,

Governor.

[FR Doc. 85-6983 Filed 3-22-85; 8:45 am]

BILLING CODE 6705-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Instruments—Statutory Interpretation

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory and regulatory interpretation by the Commission's Office of the General Counsel.

SUMMARY: The Commission's Office of the General Counsel is stating its view that various instruments which call for the future delivery of commodities and which do not meet the definition of a "leverage contract" as contained in the Commission's interim final leverage regulations, are commodity futures contracts. As such, the off-exchange offer or sale of these instruments is unlawful under section 4(a) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 6(a) (1982), and may also properly be prohibited under laws enacted by the states.

FOR FURTHER INFORMATION CONTACT: David R. Merrill, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: On January 16, 1984, the Commission adopted interim final rules which establish a comprehensive regulatory scheme applicable to specified leverage transactions. *See* 49 FR 5498 (February 13, 1984) for the text of the rules. *See also* 50 FR 22 and 50 FR 102 (January 2, 1985) for the text of certain amendments and proposed amendments to these rules. Section 31.4(w) of the interim rules, 17 CFR 31.4(w) (1984), *as amended by* 50 FR 22, 27 (January 2, 1985), generally defines the term "leverage contract" to mean a standardized contract for the long-term (10 years or longer) purchase or sale of certain leverage commodities in accordance with certain additional criteria.

In adopting its definition of a leverage contract, the Commission noted that it was exercising its exclusive regulatory jurisdication to define and to regulate those transactions that fall within the scope of section 19 of the Commodity Exchange Act, 7 U.S.C. 23 (1982). 49 FR 5498 (February 13, 1984). As to transactions not meeting the Commission's definition of a leverage contract, the Commission at that time noted that such transactions

are not within the Commission's regulatory jurisdiction under Section 19 of the Act and are not subject to Commission registration and regulation pursuant to Part 31 [the Commission's interim rules]. This "bright line" distinction between transactions subject to exclusive Commission jurisdiction under Section 19 and those not subject to Commission regulation thereunder is one of the salutary effects of the comprehensive definition adopted by the Commission. Those transactions not subject to exclusive Commission jurisdiction under Section 19 are open to regulation and enforcement by the states. *See* Section 12(e)(2)(C) of the Act.

49 FR 5498-5499 (February 13, 1984). At this time, the Commission's Office of the General Counsel wishes to make clear its view concerning the regulatory or other treatment that the states may afford to various transactions for delivery of commodities that do not meet the Commission's definition of a leverage contract as set forth in Rule 31.4(w).

In this connection, it bears emphasis that in 1982 when it last addressed the regulation of leverage transactions under section 19 of the Act, Congress reminded the Commission that it retained the "authority to take appropriate action under any other provision of the Commodity Exchange Act against transactions masquerading as 'leverage' contracts." H.R. Rept. No. 964, 97th Cong. 2d Sess. 51 (1982). Of particular relevance in this context is section 4(a) of the Act, 7 U.S.C. 6(a) (1982), which generally prohibits any person to offer or sell, or to conduct a business in the United States for the purpose of dealing in, "a contract for the purchase or sale of a commodity for future delivery," *i.e.*, a futures contract, unless such transaction is conducted on or subject to the rules of an exchange that has been designated by the Commission as a contract market, and is executed or consummated by or through a member of that contract market.[1]

While the terms and conditions of any particular transaction must be examined on a case-by-case basis, the Commission's Office of the General Counsel is of the view that many off-exchange future delivery type transactions, whether or not "masquerading" as leverage contracts, are in fact commodity futures contracts and are *per se* unlawful under section 4(a) of the Commodity Exchange Act. In general, these transactions share some of or all of the following indicia of futures contracts: they involve the purchase or sale of a commodity for delivery in the future at a price or pricing formula that is agreed upon when the transactions are initiated; they are standardized as to terms and conditions other than price; unlike commercial forward contracts or traditional installment agreements, they are undertaken primarily to assume or shift the risk of commodity price changes and are not generally entered into for purposes of obtaining delivery of the commodity, but rather are discharged through offsetting transactions or other buy-back arrangements.[2]

Because the off-exchange marketing of these transactions is unlawful under federal law, it may not be permitted by the states. However, since the 1982 enactment of the "open season" provisions of section 12(e) of the Act, 7 U.S.C. 16(e), the states have been empowered to take legislative or enforcement action to prohibit the offer and sale of these transactions. Section 12(e), among other things, expressly permits the application of any state law to commodities transactions other than those within the Act's exclusive regulatory structure, such as leverage transactions subject to regulation under Section 19.[3] Since transactions that do not meet the Commission's leverage contract definition in Rule 31.4(w) are not subject to regulation under section 19, they are subject to the "open season" provisions of section 12(e).

As indicated above, where Congress, as in section 4(a) of the Act, has prohibited the offer and sale of a particular type of commodity transaction that is also subject to the open season provision, the states may, consistent with that Congressional directive and section 12(e), also enact and enforce legislation prohibiting the marketing of the transaction. State law enforcement actions against off-exchange futures transactions may be prosecuted under any state law or as violations of section 4(a) of the Act.[4] In this regard, the Commission has consistently taken enforcement action, or joined or assisted the states in bringing actions, to curtail the unlawful offer and sale of various off-exchange instruments for future delivery.[5]

The Office of the General Counsel also wishes to make clear that certain commodity-related transactions not covered by section 19, section 4(a), or any other provision of the Act may be permitted and regulated by the states or other government agencies. For example, whether and how to permit the sale of commodities on a cash basis are generally matters of state concern, as are installment sales of commodities where the purchaser takes delivery upon entry into the transaction. The Office of the General Counsel is aware of several laws and legislative proposals that the states have developed to implement their authority under section 12(e). Of these the most comprehensive proposal appears to be the Model State Commodity Code being developed by the North American Securities Administrators Association ("NASAA").

The proposed Model Code would, among other things, prohibit under state law the offer and sale of off-exchange futures contracts (including transactions not subject to Commission regulation under section 19) and would permit certain types of sales to the public of precious metals where delivery of the commodity, or of appropriate documents of title or similar documentation, occurs within a limited period. The Office of the General Counsel is of the view that the NASAA proposal is fully consistent with the principles set forth in this notice.

Issued in Washington, D.C., on March 18, 1985, by the General Counsel.

Kenneth M. Raisler,

General Counsel.

[FR Doc. 85-6863 Filed 3-22-85; 8:45 am]

BILLING CODE 6351-01-M

[1] Contracts made on or subject to the rules of exchanges located outside the United States are not included within this prohibition.

[2] Other characteristics of a futures contact may include standardized commodity units, the initial deposit and maintenance of "margin" or like payments and no right or interest in the customer of a particular lot or other commodity unit. For a discussion of the general attributes of a commodity futures contract within the meaning of the Act, *see Commodity Futures Trading Commission v. CoPetro Marketing Group, Inc., et al.*, 680 F.2d 573 (9th Cir. 1982); *In Re Stovall, et al.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20, 941 (CFTC 1979).

[3] In addition, under section 12(e) the states may apply their laws against persons who are engaged in transactions exclusively regulated by the Commission, such as Section 19 leverage transactions, but who have failed to obtain a required registration with the Commission.

[4] In addition to being initiated solely by the Commission, enforcement actions under section 4(a) may be brought or joined in by the states. *See* section 6d of the Act, 7 U.S.C. 13a-2 (1982), pursuant to which the states are generally authorized to enforce the Commodity Exchange Act and the Commission's regulations in the federal courts.

[5] Some of these more recent actions include *Commodity Futures Trading Commission and People of the State of California v. Brazier Corp. Inc., et al.*, Civ. No. 84-2006 ER (C.D. Cal. 1984); *Commodity Futures Trading Commission v. Rose, et al.*, No. 84-6717 (S.D. Fla. 1984); *Commodity Futures Trading Commission v. Thomas, et al.*, No. 85-6066 (S.D. Fla. 1985); *Commodity Futures Trading Commission v. International Silver Bullion Exchange, et al.*, C.A. No. 84 C 10501 (N.D. Ill. 1984); and *Commodity Futures Trading Commission v. FITC, Inc., et al.*, C.A. No. 85-1553 EFL (N.D. Cal. 1985).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-58]

Staff Accounting Bulletin No. 58

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding last-in, first-out (LIFO) inventory accounting practices for financial statement purposes.

DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Leland E. Graul, Office of the Chief Accountant (202-272-2130), or Howard

P. Hodges, Jr., Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

John Wheeler,

Secretary.

March 19, 1985.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 58 to the table found in Subpart B.

Staff Accounting Bulletin No. 58

The staff hereby adds Section L to Topic 5 of the staff accounting bulletin series. Section L discusses the staff's views regarding last-in, first-out (LIFO) inventory accounting practices for financial reporting purposes.

Topic 5: Miscellaneous Accounting

* * * * *

L. LIFO Inventory Practices

Facts: On November 30, 1984, the American Institute of Certified Public Accountants' Accounting Standards Executive Committee (AcSEC) and its Task Force on LIFO Inventory Problems (task force) issued a paper, "Identification and Discussion of Certain Financial Accounting and Reporting Issues Concerning LIFO Inventories." This paper identifies and discusses certain financial accounting and reporting issues related to the last-in, first-out (LIFO) inventory method for which authoritative accounting literature presently provides no definitive guidance. For some issues, the task force's advisory conclusions recommend changes in current practice to narrow the diversity which the task force believes exists. For other issues, the task force's advisory conclusions recommend that current practice should be continued for financial reporting purposes and that additional accounting guidance is unnecessary. Except as otherwise noted in the paper, AcSEC generally supports the task force's advisory conclusions. As stated in the issues paper, "Issues papers of the AICPA's accounting standards division are developed primarily to identify financial accounting and reporting issues the division believes need to be addressed or clarified by the Financial Accounting Standards Board." On February 6, 1985, the Financial Accounting Standards Board decided not to add to its agenda a narrow project on the subject of LIFO inventory practices.

Question 1: What is the SEC staff's position on the recently released issues paper?

Interpretive Response: In the absence of existing authoritative literature on LIFO accounting, the staff believes that registrants and their independent accountants should look to the paper for guidance in determining what constitutes acceptable LIFO accounting practice.[1] In this connection the staff considers the paper to be an accumulation of existing acceptable LIFO accounting practices which does not establish any new standards and does not diverge from generally accepted accounting principles.

The staff also believes that the advisory conclusions recommended in the issues paper are generally consistent with conclusions previously expressed by the Commission, such as:

1. Pooling—paragraph 4–6 of the paper discusses LIFO inventory pooling and concludes "establishing separate pools with the principal objective of facilitating inventory liquidations is unacceptable." In Accounting and Auditing Enforcement Release No. 35, August 13, 1984, the Commission stated that it believes that the Company improperly realigned its LIFO pools in such a way as to maximize the likelihood and magnitude of LIFO liquidations and thus, overstated net income.

2. New Items—paragraph 4–27 of the paper discusses determination of the cost of new items and concludes "if the double extension or an index technique is used, the objective of LIFO is achieved by reconstructing the base year cost of new items added to existing pools." In Accounting Series Release No. 293, the Commission stated that when the effects of inflation on the cost of new products are measured by making a comparison with current cost as the base-year cost, rather than a reconstructed base-year cost, income is improperly increased.

Question 2: If a registrant utilizes a LIFO practice other than one recommended by an advisory conclusion in the issues paper, must the registrant change its practice to one specified in the paper?

Interpretive Response: Now that the issues paper is available, the staff believes that a registrant and its independent accountants should re-examine previously adopted LIFO practices and compare them to the recommendations in the paper. In the event that the registrant and its independent accountants conclude that the registrant's LIFO practices are preferable in the circumstances, they should be prepared to justify their position in the event that a question is raised by the staff.

Question 3: If a registrant elects to change its LIFO practices to be consistent with the guidance in the issues paper and discloses such changes in accordance with Accounting Principles Board Opinion No. 20, "Accounting Changes," will the registrant be requested by the staff to explain its past practices and its justification for those practices?

Interpretive Response: The staff does not expect to routinely raise questions about changes in LIFO practices which are made to make a company's accounting consistent with the recommendations in the issues paper.

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[FR Doc. 85–6976 Filed 3–22–85; 8:45 am]

BILLING CODE 8010–01–M

[1] In Accounting Series Release No. 293 (July 2, 1981) see Financial Reporting Codification section 205, the Commission expressed its concerns about the inappropriate use of Internal Revenue Service (IRS) LIFO practices for financial statement preparation. Because the IRS amended its regulations concerning the LIFO conformity rule on January 13, 1981, allowing companies to apply LIFO differently for financial reporting purposes than for tax purposes, the Commission strongly encouraged registrants and their independent accountants to examine their financial reporting LIFO practices. In that release, the Commission acknowledged the "task force which has been established by AcSEC to accumulate information about [LIFO] application problems" and noted that "This type of effort, in addition to self-examination [of LIFO practices] by individual registrants, is appropriate. . . ."

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM83–56–000; Order No. 413]

Application for License, Permit, and Exemption From Licensing for Water Power Projects

Issued: March 20, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing

applications for license, preliminary permit, and exemption from licensing for hydroelectric projects. This rulemaking: (1) Clarifies and revises many of the Commission's regulations that govern hydroelectric applications; (2) amends 18 CFR Part 4 to incorporate Commission decisions into these regulations; and (3) reorganizes several sections of 18 CFR Part 4 to integrate the regulations governing exemption applications into Subpart D of 18 CFR Part 4.

DATE: The effective date of this final rule is June 10, 1985, subject to OMB approval under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Joseph H. Long, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8526.

SUPPLEMENTARY INFORMATION:

Before Commissioner: Raymond J. O'Connor, Chairman; A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA)[1] governing applications for licenses, preliminary permits, and exemptions from licensing for hydroelectric projects. This rulemaking accomplishes three major objectives. First, it clarifies and revises many of the Commission's regulations that govern hydroelectric applications, which are set forth in 18 CFR Part 4. Second, it amends Part 4 to incorporate Commission decisions into the regulations. Third, it reorganizes several sections of Part 4 to integrate the regulations governing exemption applications into Subpart D of Part 4. Subpart D[2] prescribes the general procedural rules for filing applications, the rules of competition, and the rules for selection among competing applications.[3]

The rule will be effective June 10, 1985 as discussed below under "Effective Date and Paperwork Reduction Act." In general, application of the rule to pending proceedings should not cause any hardship or unfairness, since the rule primarily codifies Commission decisions and clarifies the old regulations. However, there may be instances in which applicants that have relied on the old regulations would be put at an unfair disadvantage by application of the new regulations. The Commission will consider petitions by such applicants requesting it to apply all or part of the old rules in these instances and will grant the petitions to avoid any unfairness.

II. Background

On February 24, 1984, the Commission issued a Notice of Proposed Rulemaking (NOPR) in which it proposed to revise several sections of Part 4 of its regulations.[4] These proposed revisions were intended: (1) to clarify numerous rules promulgated over the last few years; (2) to reflect more clearly Commission interpretations of specific regulations; and (3) to reorganize several sections concerning exemption applications.[5]

The Commission received 65 public comments in response to this NOPR. Commenters include Federal and state fish and wildlife agencies, state and municipal governments, associations representing states, municipalities, public utilities, landowners, private hydroelectric developers, and environmental groups, and several individual public utilities, landowners, and private hydroelectric developers. The final rule discusses and responds to the major comments on the NOPR. Commenters also raise several issues not discussed in the NOPR which will not be addressed here. The Commission is reviewing these comments and will determine whether they should be addressed in subsequent rulemaking dockets.

III. Reorganization of Subpart D

Commenters support the proposed reorganization of Subpart D. The Commission continues to believe that these changes will reduce cross-referencing from Subparts J[6] and K[7] to Subpart D and will clarify both the procedural rules for filing exemption applications and the rules governing competing applications for authority to develop and operate mutually exclusive projects.[8] Therefore, the Commission is reorganizing Subpart D, as follows:

Section 4.30 states that Subpart D applies to applications for a permit, a license, and an exemption. Section 4.30 also contains definitions for Part 4.

Section 4.31 states who may file an initial or a competing application for a permit, a license, or an exemption.

Section 4.32 states the conditions under which the Commission will accept an initial or competing application for a permit, a license, or an exemption.

Section 4.33 states certain circumstances under which the Commission will not accept an application for a permit, a license, or an exemption.

Section 4.34 states the conditions under which an applicant can petition the Commission for a hearing concerning an application, or under which the Commission will order such a hearing on its own accord.

Section 4.35 states the rules for assigning a new "acceptance for filing" date to an application for a permit, a license, or an exemption, when certain types of amendments are made to these applications.

Section 4.36 states the special filing requirements and deadlines for filing competing applications, and states the requirements governing the comparisons of plans of development that applicants for licenses or exemptions must make.

Section 4.37 states the rules that the Commission uses to select one application from among those competing for the same or mutually exclusive projects.

Section 4.38 states the requirements for pre-filing consultation with other agencies.

Section 4.39 states the requirements for preparing and submitting maps and plans.

Appendix A of this rule contains derivation and distribution tables. The derivation table indicates how the new regulations are derived from the old regulations. The distribution table

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[1] 16 U.S.C. 791a-825r (1982).

[2] Sections 4.30-4.35. The Commission's current regulations are cited with no preface. Regulations that were proposed in the Notice of Proposed Rulemaking are prefaced with the designation "proposed." New regulations that are being implemented by this final rule are prefaced with the designation "new." All sections cited herein are to 18 CFR Part 4.

[3] The rule revises §§ 4.30-4.35, 4.40, 4.41, 4.50, 4.51, 4.60, 4.61, 4.70, 4.71, 4.80-4.83, 4.90-4.93, 4.101-4.107, and 4.201. It adds new §§ 4.36, 4.37, 4.38, 4.84, 4.95, and 4.96.

[4] Application for License, Permit, or Exemption from Licensing for Water Power Projects; 49 FR 8009 (Mar. 5, 1984).

[5] To afford the Commission an opportunity to reconsider the categorical exemption rules, on June 15, 1983, the Commission stayed §§ 4.109-4.113, 48 FR 29474 (June 27, 1983) (Order No. 202-C). Because of the stay, the Commission does not propose, at this time, to address regulations governing categorical exemptions. That will be done in a separate rulemaking docket.

[6] Subpart J governs exemptions of small conduit hydroelectric facilities. §§ 4.90-4.94.

[7] Subpart K governs exemptions of small hydroelectric power projects of five megawatts or less. §§ 4.101-4.113.

[8] In a recent decision, Tulalip Tribes of Washington v. FERC, 732 F.2d 1451 (9th Cir. 1984), the U.S. Court of Appeals for the Ninth Circuit found certain provisions of § 4.102 to be invalid. Section 4.102 defines requirements for application for exemption from licensing for small hydroelectric power projects. As part of the reorganization, the final rule redesignates these provisions. However, by redesignating these provisions, the Commission is *not* reaffirming their validity. The Commission will respond to the court's findings in a separate proceeding.

indicates where the old regulations are located in the new regulations.

IV. Filing of Competing Applications

A. Notices of Intent to File Competing Applications

Competing applications for a site must be filed within approximately 60 days [9] after issuance of the first public notice of acceptance for filing of an initial application for that site.[10] Generally, if a prospective applicant needs additional time to prepare and submit its application, it can file a notice of intent to submit a competing application.[11] A notice of intent informs the Commission that the prospective applicant requires additional time to prepare and file a competing application, and that an additional application can be expected, before the Commission examines, compares, and acts on all the applications competing for the same site. On submitting an acceptable notice of intent, a competing permit applicant is allowed an additional 60 days [12] and a competing development (i.e., license or exemption) applicant is allowed an additional 120 days [13] beyond the last date for filing protests and motions to intervene prescribed in the public notice of acceptance for filing of the initial application.

The provisions allowing additional time to file a competing application pursuant to a notice of intent were promulgated to balance two countervailing objectives: The need to expedite the processing of initial applications after giving public notice of their acceptance for filing, and the need to allow a reasonable opportunity for prospective competitors to file competing applications. Under the Commission's notice of intent provisions, the Commission delays consideration of the initial application only when, within the deadline prescribed in the public notice of acceptance for filing of the initial application, a prospective competing applicant informs the Commission that it intends to file an application for the same site.

The NOPR explained that these provisions had resulted in numerous disputes [14] and misuse [15] and it proposed to eliminate entirely the provisions allowing notices of intent on the ground that they did not expedite or simplify the processing of applications. Under the proposed rule, a prospective competitor would have been required to file its application not later than the last date for filing protests and motions to intervene, as prescribed in the public notice of acceptance for filing of the initial application (i.e., approximately 60 days after the first publication of the notice of acceptance for filing).[16] The NOPR suggested that this approach would simplify the regulations and reduce the number of disputes arising concerning the appropriate deadline for filing a competing application. However, the NOPR specifically invited public comment on the time to be allowed for the filing of competing applications, and the strengths and weaknesses of the notice of intent mechanism.

Almost all commenters that discuss this issue strongly oppose elimination of notices of intent. The opposing commenters include municipalities, public utilities, private landowners, environmental protection agencies, environmental protection groups, and national associations representing municipalities, public utilities and private developers. Commenters oppose the proposal to eliminate notices of intent for the following reasons. First, several commenters argue that elimination of notices of intent would harm public entities. A public entity, if it can submit an application only after approval by a city council, utility governing board, state agency, or other political entity, allegedly often cannot prepare and submit a competing hydroelectric application within the Commission's current prescribed deadlines for filing competing applications. States and municipalities allegedly would have insufficient time to prepare and submit competing applications and would be unable to avail themselves of the special preferences granted them under section 7 of the FPA, in competition against private entities for hydroelectric permits or licenses.[17]

Second, commenters argue that elimination of notices of intent would result in the licensing of projects that are not "best adapted" in the public interest, as required by section 10(a) of the EPA.[18] They argue that competition results in the authorization of better adapted projects and that the proposal would greatly reduce competition.

Third, a commenter argues that, because the consultation process alone can require over 60 days,[19] the proposal would make it impossible for anyone not already consulting with other agencies to file a competing development application.

Fourth, a commenter argues that, by reducing competition, the proposal would hurt the environment, because competition often revolves around environmental considerations.

In support of the NOPR's proposal, a state agency argues that competing applications are generally incomplete and of poor quality. It supports what it characterizes as the Commission's move to reduce the number of applicants competing for a particular site.

The Commission finds commenters' arguments in favor of retaining notices of intent to be persuasive. Notices of intent provide municipalities with more reasonable deadlines in which to obtain approval to file competing applications. By providing a greater opportunity to file competing applications, notices of intent enhance the possibility that competitors will propose plans that are better adapted in the public interests with regard to environmental and other considerations. Notices of intent also allow a more reasonable time to consult with other agencies prior to filing a competing application with the Commission. The Commission disagrees with one commenter's characterization that the Commission proposed to eliminate notices of intent to reduce the number of competing applicants for a site. The Commission proposed eliminating notices of intent to provide reasonable deadlines in which to file competing applications, while not unduly delaying the consideration of applications. Therefore, for the above reasons, the Commission finds that the advantages of retaining notices of intent outweigh the disadvantages and is

[9] The prescribed deadline for filing protests and motions to intervene is published in the public notice of Commission acceptance for filing of an initial application. In determining the precise date to be prescribed in this notice, the Commission estimates the date of the first newspaper publication of the notice (usually about 7 to 10 days after the notice is issued). It then determines the date that would be 51 days later (i.e., it allows for 4 once-a-week publications of the notice, plus 30 additional days). This date is prescribed in the notice as the deadline for filing protests and motions to intervene. Throughout this rule, for convenience, it is assumed that this date is "approximately 60 days" after issuance of the notice of acceptance for filing of the initial application.

[10] Section 4.33(a)(1).

[11] Section 4.33(a)(1) and (b).

[12] Section 4.33(c).

[13] Section 4.33(c) and 4.104(d).

[14] *See* Energenics Systems, Inc., 17 FERC ¶ 61,110 (1981) (The Commission interpreted its regulations to allow a rejected competing permit application to be treated as a notice of intent); Long Lake Energy Corp., 20 FERC ¶ 61,130 (1982) (The Commission determined that a notice of intent to file a license or an exemption from licensing application could be used to file either type of application).

[15] Some notices of intent apparently are filed only to delay the initial applicant or as bargaining leverage against the initial applicant. Other notices of intent are filed without any realistic expectation of filing a competing application.

[16] Proposed § 4.36.

[17] 16 U.S.C 800 (1982).

[18] 16 U.S.C 803(a) (1982).

[19] *See* proposed § 4.38(b).

retaining notices of intent to file development applications in competition with either an initial permit application or an initial development application.

The Commission, however, continues to believe that prospective competing permit applicants do not require the additional 60 days now allowed under a notice of intent to file a competing permit application. Permit applications do not require extensive studies and plans, nor do they require pre-filing consultation with other agencies. Therefore, the Commission is reducing from 60 days to 30 days the time allowed under a notice of intent to file a competing permit application. This will ensure that prospective competing applicants, including those municipalities that must seek prior approval to file, will have a reasonable amount of time to prepare and file competing permit applications. It will allow a maximum of approximately 90 days after the first publication of acceptance for filing of an initial permit application to prepare and file a competing permit application.

B. Deadlines for Filing a Competing Application for License or Exemption From Licensing

The NOPR proposed to extend to exemption applications the rule that allows license applications to be filed any time before the Commission issues a preliminary permit for the same site. Rather than expanding this rule, the final rule eliminates it. Development applications filed in competition with an initial permit application will be required to be filed within prescribed deadlines. The Commission's proposal, comments thereto, and reasons for revising the rule are as follows.

As stated above, the Commission's regulations require competing permit and license applications to be filed not later than the deadline for filing protests and motions to intervene prescribed in the public notice of acceptance for filing of an "initial application."[20] In the *Georgia Pacific Corporation* decision,[21] the Commission determined that the term "initial application," as used in § 4.33(a)(1), encompasses two initial applications, one for a permit and one for a license, for any one project. The Commission reasoned that competition at the license level constitutes a phase of the competitive proceeding that is distinct from competition at the permit level. Thus, when an applicant files a license application in a preliminary permit proceeding, it starts a new round of competition at the license level.

The NOPR proposed to incorporate more clearly in the regulations the Commission's decision in *Georgia Pacific* that a license application may be filed in competition with a preliminary permit application at any time before the permit is actually issued.[22] In addition, the NOPR proposed to clarify that this opportunity ends if an initial development application is accepted for filing. After an initial development application is accepted for filing, any competing development application would have be be filed not later than the deadline for filing protests and motions to intervene prescribed in the public notice of acceptance for filing of the initial development application.[23]

The proposal extended beyond the precise Commission holding in *Georgia Pacific* because, to date, the Commission's rules and decisions have not fully addressed how exemption applications fit into this two-phase process. When the Commission promulgated its regulations governing exemption applications for small hydroelectric power projects,[24] it declined to allow an exemption application, or a notice of intent to submit such an application, to be filed after the last date for filing protests and motions to intervene prescribed in the public notice of an already pending permit application.[25]

The NOPR stated that, since deciding *Georgia Pacific*, the Commission believed that acceptance for filing of a license application to develop projects during the pendency of a permit application proceeding had not unduly burdened the Commission, any of the interested entities, or the process itself. Because an application for exemption is similar to an application for a license in that applicants for either are ready to build, the Commission believed that allowing an initial exemption application, and competing applications, to be accepted for filing up until a pending permit application is granted would also cause no undue burden. Rather, the Commission believed that allowing exemption applications to be filed in these circumstances would expedite development of hydroelectric sites because an exemption applicant, unlike a permit applicant, is prepared to proceed with construction immediately.

The NOPR therefore proposed to treat exemption applications the same as license applications.[26] Under the proposed rule, an application for exemption from licensing would have been accepted in competition with a pending permit application at any time before the Commission granted a permit, or not later than the last date for filing protests and motions to intervene prescribed in the public notice of acceptance for filing of the initial development application for the site, whichever occurred first.[27]

Several commenters argue that the Commission should not expand the *Georgia Pacific* rule to cover exemptions, but, rather, should reverse it. They argue that the *Georgia Pacific* rule introduces too much uncertainty into an already complex system and that permit applicants need a deadline after which they know they will not be subject to competition from development applicants. They request the Commission to set a definite deadline for the filing of an initial development application filed in competition with an initial permit application.

The Commission has considered and balanced the countervailing objectives involved in setting deadlines for the filing of competing applications: favoring actual development over studies, reducing unnecessary uncertainty, assuring fair treatment of prospective competing applicants, and promoting efficient use of the Commission's resources. While the Commission does favor development over studies, it has found that applicants sometimes file development applications merely as a tactic. Frequently, they file competing license or exemption applications rather than competing permit applications when they have not completed the necessary studies and therefore are not prepared to file an acceptable development application. They do this knowing that they would be unable to file competing permit applications that would be better adapted than the initial permit application to develop a region's resources in the public interest and that the initial permit application would therefore be granted under the Commission's "first to file" rule, assuming that municipal preference did not apply.[28]

[20] Section 4.33(a)(1).

[21] Georgia Pacific Corp., 17 FERC ¶ 61,174 (1981).

[22] Proposed § 4.36(a)(2)(i).

[23] Proposed § 4.36(b)(a).

[24] Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Projects with an Installed Capacity of Five Megawatts or Less, 45 FR 76115 (Nov. 18, 1980) (Order No. 106).

[25] Section 4.104(a)(2)(i).

[26] Proposed § 4.36(a)(2)(i).

[27] *Cf.* Milton and Morris Zack, 23 FERC ¶ 61,121 (1983) (noting that the current regulations prescribe different deadlines for filing license and exemption applications in competition with a permit application).

[28] *See* § 4.33.

The Commission does not object to shifting competition from the studies phase to the development phase. In fact, the Commission encourages it. However, where competing applicants in their rush to prepare and file development applications have not performed the necessary studies and have not adequately developed their plans, the Commission's staff wastes time and effort reviewing and ultimately rejecting poorly-prepared competing development applications, and the development of hydropower is delayed rather than enhanced.

In order to discourage the submission of prematurely-filed, poorly-prepared development applications and to introduce greater certainty into the process for all prospective competing applicants and the Commission, the Commission is reversing the *Georgia Pacific* rule. The final rule requires an initial development applicant to file its application within a prescribed deadline, approximately 60 days after the first publication of notice of acceptance for filing of the initial permit application. However, to allow prospective competing development applicants that have already completed, or very quickly can complete, all necessary studies and pre-filing consultations, a short additional time to complete their applications, they will be allowed to file notices of intent and obtain an additional 120 days to file their competing development applications.

Under these new filing deadlines, all interested parties will know the identity of all actual and prospective competing applicants within approximately 60 days of the first newspaper publication of notice of acceptance for filing of an initial permit application. Permit applicants will know whether they should be preparing development applications to compete with a competing development applicant rather than waiting for the Commission to act on their permit applications.

The Commission believes these new deadlines will make the permit competition process more certain, while allowing applicants that are truly prepared to proceed with development to file competing applications.

C. Exemptions

1. Competing Exemption Applications

There are circumstances in which more than one potential applicant could qualify for an exemption.[29] The NOPR proposed to clarify that the Commission does allow competition for an exemption.[30]

Until now, the Commission's regulations have been silent on how it selects from among two or more competing exemption applications for the same project. In comparing competing permit or competing license applications, when either both applicants have municipal preference or neither applicant has municipal preference, the Commission favors the applicant with plans of development that are better adapted to develop, conserve, and utilize in the public interest the water resources of the region.[31] If the plans of development of the competing applicants are equally well adapted, neither applicant has municipal preference (or both do) and neither applicant is the permittee, the Commission favors the applicant with the earliest application acceptance date.[32]

In the NOPR, the Commission proposed to provide expressly that the "better adapted" and "first-in-time" rules of preference apply to competing applications for exemption from licensing of a small hydroelectric power project or a small conduit hydroelectric facility. The NOPR proposed to amend the Commission's regulations [33] to expressly state that the Commission would apply these rules of preference in selecting among competing exemption applications.[34]

The American Public Power Association (APPA) argues that, where competition for a site exists, an exemption is unnecessary; the exemption process is intended to encourage development of previously ignored sites, not necessarily or primarily to expedite development of known and usable sites. The APPA made these same arguments in the rulemaking establishing regulations governing application for exemption.[35] The Commission continues to reject these arguments for the reasons set forth at length in that rulemaking. The Commission is adopting the regulation as proposed.

2. Permit Applications Submitted After an Exemption Application

The Commission's regulation state that, with certain exceptions, the Commission will not accept for filing an application for a permit for a small hydroelectric power project if the Commission has accepted a previously filed exemption application for that project and has not yet granted or denied that exemption application.[36] The NOPR proposed to clarify the Commission's implementation of this restriction. If an initial application for a project is for a permit, and an exemption application is then filed that is the initial development application, the Commission only accepts subsequent permit applications filed not later than the last date for filing applications in competition against the initial permit application (as would be determined by proposed § 4.36(a)).[37] The Commission received no comments opposing this proposal. Accordingly, the Commission is adopting it.

3. Competing Exemption and License Applications

The Commission's regulations state that if an application for a license and an application for exemption from licensing are both accepted for filing and each proposes to develop the same site, the Commission will favor the first filed application unless the Commission determines that the plans of the subsequent applicant would better develop the water power potential of the affected resources.[38] The regulations do not state expressly that the Commission will make this comparison. The NOPR proposed to clarify that the Commission will make the comparison, will favor the applicant with the better adapted plans, and that if the plans of the competing applicants are equally well adapted, the Commission will favor the applicant that filed first.[39]

A commenter argues that applying the "first in time" rule to competition between a license applicant and an exemption applicant creates problems because the regulations impose different reporting, consultation, and other requirements for the two types of applicants. The Commission finds that the differences in filing requirements between the two types of applications do not create an unfair advantage for either type of applicant. The

[29] For example, this can occur where only Federal lands would be used or occupied (*see* Douglas Pegar, 23 FERC ¶ 61,110 (1983)) or where more than one potential applicant has all the necessary property interests.

[30] Proposed § 4.36(b).

[31] Section 4.33(g)(1). *See also* section 10(a) of the Federal Power Act, 16 U.S.C. 803(a) (1982).

[32] Section 4.33(g)(2).

[33] Proposed § 4.37(d)(2).

[34] Municipal preference does not apply in selecting among competing exemption applications.

[35] 45 FR 76115 (Nov. 18, 1980) (Order No. 106).

[36] Section 4.104(c)(1).

[37] Proposed § 4.33(a)(3).

[38] Section 4.104(e)(2). Municipal preference does not apply in competition between a public entity license applicant and an exemption applicant.

[39] Proposed § 4.37(d)(2).

Commission's experience has been that it can compare projects on their merits and select the project that best utilizes a region's resources in the public interest, whether the applicant is seeking an exemption or a license. If the Commission requires additional information from any applicant, it can acquire it under § 4.31(f). Therefore, the Commmission is adopting the proposal.

4. Competing Exemption and Permit Applications

The Commission's regulations state that the Commission will favor an application for exemption from licensing over an application for a permit.[40] This reflects the rebuttable presumption that preliminary permit applications are less concrete in nature and do not offer substantiated information and result in study rather than immediate development, whereas accepted exemption applications are fully developed proposals that are to be put into effect soon after approval. However, if the permit applicant's plans are both better adapted to develop the region's water resources and are substantiated in the application, the Commission will favor the permit applicant.[41] Where the permit applicant's plans are not substantiated, or, if substantiated, are not better adapted, the Commission will favor the exemption applicant. The NOPR proposed to codify this Commission policy.[42]

Commenters generally favor codifying the Commission's current practice of comparing substantiated plans of a permit applicant with those of exemption applicants. However, a commenter questions the fairness of requiring a permit applicant to have substantiated its plans in its originally filed application. The commenter argues that when a permit applicant files its application it does not know that it will be competing with a later filed development application. Therefore, even though able to substantiate its plans, it might not do so because it is not aware of the need to do so until after the competing development application is filed.

The Commission will allow a permit applicant to substantiate its plans within the deadlines prescribed for filing competing development applications in competition with the initial development application. This will allow the permit applicant to substantiate its application while not delaying the review process.

The same commenter requests the Commission to detail what it will accept as adequate substantiation. The Commission advises permit applicants that want their applications to be considered in competition with development applications to demonstrate that their plans of development are feasible in all aspects, such as engineering feasibility, environmental consequences, and economic soundness. The Commission notes, however, that it expects it to be the unusual case where a permit applicant can substantiate a superior proposal. As the Commission has frequently noted,[43] and as is reflected in its regulation's rebuttable presumption, a permit application is usually sketchy and unsupported. Generally, if an applicant has studied a project to a degree sufficient to substantiate its proposal, it will apply for a license or exemption. Thus, those rare cases where a permit application has substantiated superiority over another application have generally involved a showing of superior flexibility to maximize development of the site.[44]

5. Threshold Capacity Required To Compete Against an Exemption Application for a Small Hydroelectric Power Project

The Commission's regulations require that a prospective competing license applicant propose to develop a project with an installed capacity of at least 7.5 MW to compete with an initial application for exemption of a small hydroelectric power project.[45] This threshold capacity requirement encourages prospective exemption applicants to develop small hydroelectric power projects. It buffers them from the full force of competition by allowing competition from a prospective license applicant only if that applicant can prove that it can develop a project with at least 50 percent more capacity than the largest project (5 MW) eligible for this type of exemption.

The NOPR proposed to eliminate this threshold capacity requirement.[46] Under the proposed rule, prospective license applicants would not have to propose projects with greater installed capacities to compete against an initial exemption application. The Commission suggested that prospective exemption applicants do not need this favored treatment. The favored treatment is given only if the exemption applicant files the initial development application. If such an exemption applicant's plans of development are at least as well adapted as the plans of other applicants to develop the region's water resources, the Commission will favor its application under the Commission's "first the file" rule.[47] However, if a license applicant's plans are better adapted to develop the region's water resources, the Commission suggested that it would be in the public interest to favor the license applicant.

While most commenters on this proposal favor it on the ground that it will eliminate the underdevelopment of sites, other commenters argue that, rather than discarding the 7.5 MW capacity threshold requirement, the Commission can encourage development of sites by requiring license applicants to propose projects with installed capacities of at least 1½ or 2½ times the size of the proposed exemption project. The Commission believes that a variable threshold capacity requirement would not be in the public interest because it would continue to give protection from competition to exemption applicants whose plans fail to develop the region's resources as fully as they can be developed by another applicant. Thus, the final rule adopts the approach discussed in the NOPR.

6. Competition Against a Small Conduit Hydroelectric Facility Exemption Application

The Commission's regulations do not address competition against an application for exemption of a small conduit hydroelectric facility. The NOPR proposed to extend the Commission's general rules for competition against an application for exemption of a small hydroelectric power project to competition against an application for exemption of a small conduit hydroelectric facility.[48] The NOPR also proposed to codify the Commission's current practice[49] of allowing more than one application for a small conduit hydroelectric facility to be filed in competition for the same site and allowing conduit exemption applications and small hydroelectric power project exemption applications to be filed in competition with each other.[50] No

[40] Section 4.104(e)(1).

[41] *See* Western Power, Inc., 23 FERC ¶ 61,343 (1983).

[42] Proposed § 4.37(d)(1).

[43] *See, e.g.*, Fluid Energy Systems, Inc. 20 FERC ¶ 61,017 (1982).

[44] *See* Marsh Island Hydro Assocs., 16 FERC ¶ 61,236 (1981); and City of Ukiah, 18 FERC ¶ 61,108 (1982) (both involve competing permit applications).

[45] Section 4.104(c)(2)(i).

[46] Compare § 4.104(c) and proposed § 4.33(c).

[47] Section 4.104(e)(2).

[48] Proposed §§ 4.33, 4.36 and 4.37.

[49] *See* City of Gridley, 22 FEPC ¶ 61,256 (1983).

[50] Proposed § 4.36(b)(2).

commenter opposes the proposal, and the Commission is adopting it.

V. Evaluation of Competing Applications

A. Applicant's Comparisons of Plans of Development

The Commission grants a preliminary permit to the applicant with the plans best adapted to develop, conserve, and utilize in the public interest the water resources of the region, or, if the plans are equally well adapted, to the first applicant to file an acceptable application.[51] At this early stage of planning, comparisons made by competing applicants of their plans of development to those of the initial applicant and rebuttals of these comparisons by the initial applicant have not usually helped the Commission in determining whether one set of plans is better adapted than another set of plans. Plans are too rudimentary at this stage of the process. In most cases, to the extent that plans could be compared, the Commission could do so without referring to the applicants' comparisons. The NOPR therefore proposed to eliminate the generic requirement that a competing applicant for a preliminary permit compare its plans to those of the initial applicant. In the unusual case where the Commission does need permit applicants' comparisons of plans, the Commission can request that they be submitted.[52]

In the phase of competing for a license or an exemption from licensing, competitors' plans are much more fully developed and can be compared more readily. At this stage of competition, the Commission can use the assistance of the applicants in comparing the various plans of development to determine which plans are best adapted in the public interest. The NOPR stated the Commission's belief that these comparisons would be more useful if, after all applications have been submitted, applicants compared their plans to those of *all* the other applicants. Under the regulations, competing applicants must compare their plans only with those of the initial applicant.[53]

The NOPR therefore proposed to require that all license and exemption applicants competing for the same site compare their plans of development to the plans of development of all other applicants to show the Commission how their own plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region.[54] The NOPR also proposed to change the Commission's practice of automatically finding patently deficient an application that at the time of filing failed to include comparisons of plans of development.[55] Under the proposed rule, license and exemption applicants would be required to compare their plans with those of other applicants, but failure by an applicant to do so would not automatically cause an application to be rejected as patently deficient.[56]

Commenters generally support this proposal, but with reservations. Two commenters believe the Commission should continue to require comparisons of plans for permit applications. One commenter believes that comparisons of plans in permit applications should be voluntary, except when the permit applicant is competing against development applicants. The commenter argues that, in such cases, the permit applicant should be required to compare its plans with those of development applicants.

The Commission continues to believe that comparisons of plans by permit applicants are unnecessary in most cases. However, it agrees that comparisons by permit applicants whose applications are being compared with development applications would be useful to the Commission in those rare situations when the Commission is comparing substantiated permit applications with development applications. When this occurs, the Commission intends to require those permit applicants to make comparisons of their plans with those of the other competitors and to require the development applicants to compare their plans with those permit applicants.

Commenters argue that they will need more than the 40 days proposed in which to compare plans of development. The final rule therefore allows 60 days after the Commission notifies an applicant of the identity of each competing applicant for the submission of comparisons.

A fish and wildlife agency argues that applicants should be specifically required to compare treatment of fish and wildlife resources. This is only one of the many areas that must be treated by applicants in making their comparisons. Applicants must compare all factors relevant to deciding which plans are best adapted in the public interest. The Commission will not specify in its regulations each area that must be compared and therefore it is not expressly listing this one type of comparison.

B. Special Limitations on Submission of Applications

The NOPR proposed to add a new provision to specifically delineate the Commission's authority to refuse to accept all applications for a project, or to accept applications but not treat any one as the first to be filed.[57] The NOPR explained that the Commission intends to use this power only rarely to handle certain extraordinary situations where the normal rules governing acceptance of applications and competition among applicants have not resulted in a single development plan for the water resource that fully satisfies the public interest in responsible hydropower development.

Commenters argue that the proposed regulation is poorly conceived, contains vague criteria, opens the door to charges of arbitrary action and could be applied capriciously. The NOPR was not intended either to expand or to limit the Commission's power to act in certain extraordinary situations. Rather, it was intended to apprise applicants that the Commission has this authority, has acted in extraordinary situations in the past, and will do so again when the situation warrants it. The Commission cannot foresee all such situations or the actions that it will be required to take. Therefore, it is not practical to promulgate a regulation that prescribes the exact circumstances and actions that the Commission will take. However, the Commission has reconsidered this proposal and is not adopting it because it is unnecessary.

VI. Consultation With Other Agencies

In Order No. 255,[58] the Commission clarified in great detail the different steps that a prospective exemption applicant must take during consultation with Federal and state fish and wildlife agencies before filing an exemption application with the Commission. However, developers too often submit exemption applications to the Commission without having consulted adequately with the appropriate fish and wildlife agencies.[59] The Commission has

[51] This assumes that the municipal preference under section 7(a) of the FPA does not apply.

[52] *See* § 4.31(f).

[53] Section 4.33(d).

[54] Proposed § 4.36(c)(2).

[55] Sections 4.31(d)(2)(i) and 4.33(d)(2).

[56] Proposed § 4.32(d)(2)(i).

[57] Proposed § 4.33(f).

[58] Amendments to Regulations Governing Case-by-Case Exemption From All or Part of Part I of the Federal Power Act for Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less, 47 FR 38506 (Sept. 1, 1982) (Order No. 255).

[59] *See, e.g.*, Eastern Sierra Energy Development, 20 FERC ¶ 61,348 (1982); Potter Instrument Co., 19 FERC ¶ 61,299 (1982).

had to reject many of these applications as patently deficient. The applicants have then had to consult further with the fish and wildlife agencies and resubmit their applications.

This process of inadequate initial consultation, rejection, reconsultation, and resubmittal of an application is a waste of the time and resources of the applicants, the fish and wildlife agencies, and the Commission. Therefore, the NOPR proposed to add a new section to the regulations to consolidate the Commission's consultation requirements for applicants for licenses and exemptions[60] and to clarify the minimum steps that must be taken to consult adequately with appropriate agencies, including the fish and wildlife agencies. The Commission reminded applicants that those that persist in failing to consult adequately with these agencies would continue to have their applications rejected by the Commission as deficient.[61]

Under the proposed rule, applicants would be required to contact all the appropriate agencies and provide them with details with respect to their planned projects.[62] During this initial phase, applicants would not merely provide information to agencies. An effort would be required to determine the types of studies agencies consider necessary, the information they have in hand, their concerns about the environmental consequences of the proposed project, and their ideas about mitigation of adverse impacts or enhancement of resources. Areas of disagreement between applicants and agencies would be isolated, and an attempt to resolve conflicts would be made. The NOPR noted that if applicants and the agencies could not resolve their conflicts the Commission would give great weight to the agencies' expertise in deciding whether the applicants had performed all the studies necessary to consult properly.

Commenters generally approve the proposed regulation. Most, however, recommend that the Commission revise it in specific ways. The major recommended changes, and the Commission's response to them, are as follows.

1. Commenters recommend that additional entities be placed on the list of agencies that applicants must consult before filing an application. The entities suggested are: natural resource agencies; environmental protection agencies; state land management agencies; state recreational agencies; state water agencies; and Indian tribes. Also, commenters recommend that the list be published in § 4.38.

The Commission periodically updates its list of known entities that must be consulted to include additional entities that become known to the Commission. The Commission will periodically review this list and will add to it additional entities that it believes should normally be consulted. However, prospective applicants are advised that the list is only a partial one. They must seek out and consult with all appropriate entities, whether or not those entities are specifically included in the Commission's list. Because of the length of the list and the fact that the Commission periodically updates it, publication in the Code of Federal Regulations would be impractical. The list is included as part of the Commission's Blue Book, which is readily available to prospective applicants.

2. Commenters argue either that the proposed three-stage consultation process is too complicated and should be simplified, or that it is too short and should be expanded. Some commenters argue that the proposed three-stage process should be reduced to a two-stage process. One commenter argues that, for already-constructed projects, the three-stage process is unnecessarily formal and complicated. That commenter recommends that, in cases involving constructed projects, a simpler two-stage process be substituted for the proposed three-stage process and that § 4.38 be amended to allow a more flexible consultation process geared to the size and complexity of individual projects.

The proposed rule already provides for a simpler consultation process for less complicated projects. The type, difficulty, and number of studies required for pre-filing consultation vary with the complexity of the proposed project. If the consulted agencies decide that it is unnecessary for the prospective applicant to undertake any particular step of the consultation process, the agencies may expressly waive, and the prospective applicant may then omit, that step of the pre-filing consultation process. The final rule explicitly allows omission of requirements of § 4.38 when all the appropriate agencies waive those requirements. If a dispute arises later as to the adequacy of an applicant's consultation, the applicant must prove that the agencies waived the omitted steps of its consultation. Prospective applicants therefore are advised to obtain written waivers from each appropriate agency if they omit any step of the prescribed consultation process.

3. The proposal would require prospective applicants to provide consulted agencies either 30 days or 60 days, depending on the type of project, in which to analyze and respond to the applicants' plans of development. Commenters argue that the proposed rule would allow insufficient time for such analysis and comment. One commenter recommends that applicants should be required to start the consultation process at least 18 months before filing application with the Commission. The Commission believes that the time allowed agencies to review draft applications and comment on them is adequate. These time periods begin only after the applicant has already informed the agencies of its general plans and submitted all the necessary studies required by the agencies.

4. Some commenters object to the proposed requirement that studies be completed before an application may be filed with the Commission. They argue that this requirement is a change from current Commission practice and that certain studies take several months or even years to complete. Commenters describe instream flow studies as an example of the type of studies that are routinely performed after submission of an application. They request the Commission to revise proposed § 4.38 to allow studies to be completed after pre-filing consultation and after filing an application with the Commission.

The Commission believes that certain major studies must be completed prior to submission of an application. The results of these studies are necessary for consulted agencies to analyze and respond to applicants' proposed plans of development. These include studies that concern the economic or technical feasibility of the project, that are necessary to determine the design or location of project features, that measure the impact of the project on important natural or cultural resources, or that analyze mitigative measures, or that are necessary to minimize the impact on a significant resource. However, the Commission agrees that there are other studies, the results of which are not required for pre-filing consultation or for consideration by the Commission in its review of an application. These include studies that can be conducted only after a project is operating, that determine the success of mitigative measures, that deal with refinements to the project's operation, or

[60] Proposed § 4.38. Because the same problems with respect to inadequate pre-filing consultation occur in license applications, and to consolidate the Commission's regulations governing consultation, this section also applies to license applicants.

[61] Proposed § 4.32(d)(2).

[62] Proposed § 4.38(a).

modifications to the project's facilities. The final rule allows these studies to be completed after pre-filing consultation.

5. Commenters discuss the problem that arises when applicants and agencies disagree over which studies applicants must do before the agencies are able to review proposed plans. As to license applications, and to exemption applications to the extent they involve matters other than impact on fish and wildlife resources, the Commission makes the final decision on whether particular studies are necessary but will give great weight to a consulted agency's determination that a particular study is necessary. However, if an applicant strongly believes that particular studies are unnecessary, it can refuse to perform those studies and file its application. The applicant will then bear the burden of proving to the Commission that the omitted studies were indeed unnecessary. If the Commission finds that the omitted studies were necessary, the application will be rejected because the applicant will have failed to consult adequately. The applicant will then be required to do the studies and reconsult before refiling.

In the recent *Olympus Energy Corporation* decision, [63] the Commission determined that, in case-specific exemption applications, Congress gave specified fish and wildlife agencies the exclusive authority and responsibility for protecting fish and wildlife resources. Therefore, these agencies must determine which studies concerning fish and wildlife resources must be completed before they can review such applications.

6. Commenters object that the proposed rule fails to consider the proprietary rights of prospective applicants. They claim that the rule would require them to expose their plans for development to public scrutiny and that this would leave them open to, as one commenter expresses it, "a marauding municipality's xerox machine." The Commission does not require prospective applicants to reveal their plans to the public. It does require them to provide their plans to consulted agencies for the agencies' analysis and response. The Commission cannot control whether the consulted agencies reveal to the public plans filed with them. Prospective applicants should address their concerns regarding confidentiality of plans to the individual agencies.

7. Commenters object to the proposed requirement that an applicant give consulted agencies a preliminary schedule of the dates the applicant expects to file its application, to begin and complete construction, and to initiate operations. Commenters claim that disclosure of these dates will give potential competitors an unfair competitive advantage. The Commission proposed requiring submission of schedules of dates to help the consulted agencies schedule their staff resources. However, the information is not necessary and, in response to the commenter's objections, the Commission is deleting this requirement from the final rule.

8. A commenter argues that the Commission should not allow consulted agencies to raise new issues after an applicant has adequately completed its pre-filing consultation process. The Commission disagrees. It is in the public interest to allow agencies to raise new issues throughout the authorization process, before the granting of a license or an exemption. The Commission will continue to review recommendations by agencies for additional terms and conditions submitted after pre-filing consultation and determine whether it is in the public interest to impose them.

9. Commenters suggest that the Commission require prospective applicants to jointly undertake certain studies. While it might well be more economical for prospective applicants to share the costs of these studies, the Commission will not force them to cooperate.

VII. Other Aspects of the Exemption Process

A. Real Property Interests for Exempt Projects

When the Commission adopted Subpart J of Part 4, governing applications for exemption of small conduit hydroelectric facilities, it anticipated that only property owners having all the real property interests necessary to develop and operate such a facility would apply for such an exemption. However, the Commission has received applications for these exemptions from entities that did not own all the real property interests necessary to develop and operate their proposed projects. [64] Unlike a licensee, an exemption holder cannot acquire property rights through the power of eminent domain provided under section 21 of the FPA. If the exemption holder does not possess all the necessary real property interests, it cannot immediately develop and operate the project. The NOPR therefore proposed to require an applicant for such an exemption to have either all the real property interests in the lands necessary to develop and operate its project or an option to obtain those interests. [65] The NOPR also reminded these exemption applicants that their applications will be rejected as patently deficient if adequate documentary evidence of ownership is not submitted with their applications.

Commenters argue that a public entity should not be required to obtain necessary real property interests before filing an application for an exemption. They argue that, because a public entity has the right of eminent domain under its state law, ownership of real property is not a prerequisite for it to proceed expeditiously with its project. The Commission disagrees. As the Commission stated in Order No. 106, possession of state power of eminent domain is not an adequate substitute for ownership of non-Federal lands. [66] The possibilities of bitter and lengthy condemnation litigation before development could go ahead and the time limit on commencing construction portend too great a risk that exemptions in such circumstances would be wasted. An entity with state power of eminent domain may, of course, take the necessary property interests and than apply for exemption. [67]

A western state water resources control board requests the Commission to require that applicants apply for all necessary water rights before filing exemption applications, claiming that such a requirement would expedite the exemption process. The Commission intends to review whether its regulations should require exemption applicants to obtain all possible necessary water rights prior to filing exemption applications. If it finds such a requirement appropriate, it will propose it in a subsequent rulemaking docket. The Commission is not considering adopting this proposal in this final rule because it would impose a substantial new requirement and was not proposed in the NOPR.

B. Automatic Suspension of the 90- and 120-Day Periods for Commission Action on Exemption Applications

The Commission must act within 90 days on applications for small conduit hydroelectric facilities and within 120 days on applications for small hydroelectric power projects. [68] In the

[63] Olympus Energy Corp., 26 FERC ¶ 61,407 (1984) *(reh. pending)*.

[64] *See, e.g.*, City of Gridley, 22 FERC ¶61,256 (1983).

[65] Proposed § 4.31(b).

[66] 45 FR 76115 (Nov. 18, 1980) (Order No. 106).

[67] *Id. See also* City of Ogdenburg, 22 FERC ¶61,313 (1983).

[68] *See* §§ 4.93(e) and 4.105(b)(5).

absence of action within those deadlines, exemption applications are automatically granted. However, the Commission may take affirmative action within the deadlines to suspend the running of the time periods. When an acceptable competing application is filed within these time periods, the Commission compares competing applications and grants the exemption, license, or permit to the applicant with the best adapted plans of development, or, if the plans are equally well adapted, to the applicant that filed first. To afford meaningful comparative consideration to competing applicants, the Commission must usually suspend the running of the time periods. However, if the Commission inadvertently fails to suspend, an exemption could be automatically granted to the initial exemption applicant.[69] To avoid such occurrences, the NOPR proposed that, upon the filing of a competing application, the mandatory time periods for Commission action on exemption applications would automatically cease to run. The Commission would then consider all the competing applications.[70]

The NOPR also proposed to automatically suspend the running of the mandatory time period if an application for exemption of a small hydroelectric power project is accompanied or supplemented by a petition for waiver.[71] The Commission's regulations allow a qualified applicant for such an exemption to petition for a waiver of any specific provision of §§ 4.102 through 4.107.[72]

Some commenters recommend that the proposed automatic suspension provision apply also in cases where protests, adverse motions to intervene, or other timely filings are made. One commenter, however, argues that the automatic exemption provisions might produce "more mischief than good, and should be eliminated altogether."

The Commission initially promulgated the deadlines on its handling of exemption applications to express its commitment to act expeditiously on those applications. The short time limits were prescribed because the Commission expected that exemption projects generally would be uncomplicated, environmentally non-controversial, and uncontested. It expected almost always to be able to grant or deny exemption applications by written order before the 90- or 120-day periods expired. However, the Commission has found exemption applications often to be complicated, environmentally controversial, and contested. Exemptions have sometimes been automatically granted inadvertently, to the dismay of the Commission and to the financial harm of competing applicants. The proposed amendments were intended to resolve the problems that the Commission has experienced with these provisions.

However, after further consideration, the Commission concludes that the proposed regulations would be unnecessarily complicated. Applicants seldom rely on the automatic granting provisions as proof that their exemptions have been authorized. They request written confirmation from the Commission anyway. Under the proposed changes to the regulations, applicants would have had even less reason to rely on the automatic granting provisions because the time periods would have been suspended automatically as soon as any competing applications were filed. In order to simplify the regulations, the final rule is eliminating the provisions providing for automatic granting of exemptions. All exemptions will now be granted only by written order of the Commission or its delegate. The Commission will continue to act as expeditiously as possible on exemption applications. Applications for projects that are uncomplicated, environmentally noncontroversial, and uncontested will be acted on quickly—normally within a few months from Commission acceptance for filing.

C. Waiver of Conduit Exemption Regulation

Under the Commission's regulations, an applicant for exemption of a small conduit hydroelectric facility can request a waiver of discharge requirements[73] for that type of exemption when it files its application.[74] The Commission must rule on the waiver request before accepting the application.[75] The NOPR stated that the Commission should have the flexibility to rule on the waiver request either when it considers the application on its merits or at any other appropriate time. Therefore, the NOPR proposed to allow the Commission this flexibility and to clarify that the acceptance, by itself, of a conduit exemption application does not constitute a ruling on any request for waiver of the discharge requirements.[76] There were no comments on this proposal. The Commission is adopting it.

D. Revocation of an Exemption to Allow More Substantial Development

The Commission is responsible for regulating non-Federal development of water resources to provide for the most comprehensive development of hydroelectric power.[77] If, in order to fulfill this mandate, exempted projects must be altered, or are determined to be obsolete, the Commission, using its inherent authority, may revoke an exemption even after the project has been authorized and is fully operational.[78] This is in part a necessary consequence of the indefinite term for an exemption as opposed to the finite term for a license. The Commission recognizes that exemption holders must be assured of the continuing validity of their exemptions to the maximum extent permitted by law.

To clarify the Commission's responsibilities, the NOPR proposed to add a new article to the standard terms and conditions of exemptions of small conduit hydroelectric facilities and exemptions of small hydroelectric power projects. This standard article[79] would expressly reserve the Commission's right (1) to require modifications in the structure or operation of an exempted project, or (2) to revoke an exemption if the most comprehensive development of a region's water resources so requires. If in deciding upon a particular license application the Commission determines it should revoke an already issued exemption and instead issue a license for a given site, the licensee would be required either to purchase the exemption holder's property or to acquire the property by eminent domain and pay compensation to the exemption holder pursuant to section 21 of the FPA.

Commenters argue that the Commission should delineate the precise procedures for determining the amount of "fair compensation" that licensees will be required to pay in such a case if the property is acquired by eminent domain under section 21. Section 21 precludes the Commission from prescribing specific procedures by providing that the "practice and procedure in any action or proceedings for (the purpose of exercising rights of eminent domain) in the district court of the United States shall conform as nearly as may be with the practice and

[69] *See* Hirshey v. FERC, 701 F.2d 215 (D.C. Cir. 1983).

[70] Proposed §§ 4.93(c)(2) and 4.105(b)(2).

[71] Proposed § 4.105(b)(2)(iii).

[72] Section 4.103(d)(1).

[73] Section 4.91(f)(5) and proposed § 4.30(b)(26)(v).

[74] Section 4.92(c)(1)(i).

[75] Section 4.93(a)(2).

[76] Proposed § 4.93(a).

[77] Section 10(a) of the FPA, 16 U.S.C. 803(a) (1982).

[78] *See* 45 FR 76115 (Nov. 18, 1980) (Order No. 106); Metro. Dist. of Hartford, 18 FERC ¶ 61,254 (1981); Wells River Hydro Assocs., 18 FERC ¶ 61,157 (1982).

[79] Proposed §§ 4.94(d) and 4.106(f).

procedure in similar action or proceeding in the courts of the State where the property is situated. . . ." [80]

Fish and wildlife agencies argue that the Commission cannot require modifications or revocations when such actions would affect fish and wildlife resources without first providing for consultation with the appropriate fish and wildlife agencies and allowing them to impose mandatory mitigative terms and conditions. Since the Commission has found that specified fish and wildlife agencies have the exclusive authority and responsibility to set terms and conditions affecting these resources when an exemption is issued, the Commission agrees with the commenters that these agencies must also be allowed to impose new terms and conditions to protect these resources before an exemption, for which construction has begun, is revoked or modified.[81] Before the Commission revokes or requires modification to such an exemption, it will allow these fish and wildlife agencies to impose new mitigative terms and conditions.

Commenters urge the Commission to delineate precisely all circumstances in which it would require modifications or revocations. The Commission cannot prescribe all such circumstances because it cannot foresee all circumstances in which the public interest might require modifications or revocations of exempted projects.

Commenters express concern that this new article might heighten the risk of investing in exempted projects, therefore making it more difficult to secure financing to construct them and casting a significant doubt on the ability of a project to be considered as a dependable source of energy. The Commission reemphasizes that it expects to require modifications or revocations only in rare circumstances. Therefore, decisions to construct, operate, or rely on an exempted project for power should not be unduly affected by this provision.

E. Amendments to an Issued Exemption

The Commission expects an exempted project to be constructed and operated as described in the exemption application that was approved by the Commission. The NOPR proposed to establish a procedure through which an exemption holder that desired to change the design, location, or method of construction or operation of its project could obtain from the Commission a determination as to whether its proposed changes would be allowed under its issued exemption.[82] The Commission would then review the proposed changes and determine whether they would be consistent with the exemption or whether they would constitute a material change and therefore not be allowed. Under the proposed rule, within 45 days of receipt of the exemption holder's request for a determination, the Commission would have notified the exemption holder whether its proposed changes were consistent with its issued exemption. If the Commission did not respond within 45 days, the exemption holder would automatically be allowed to proceed with its proposed changes. If the Commission determined that the proposed changes were material, the exemption holder would be required to apply for an amendment to its exemption or apply for a license.

An application for an amendment to an exemption would be prepared, filed, and processed in the same way as an application for exemption from licensing, with one difference. The Commission would not accept applications in competition against an application for an amendment of an exemption.

Several agencies, including the National Marine Fisheries Service (NMFS) and the Department of the Interior (DOI), argue that the Commission must allow the same fish and wildlife agencies that have been authorized by Congress to impose mandatory conditions to protect fish and wildlife resources to impose terms and conditions on amendments to exempted projects.[83] DOI also recommends providing for a delay in the 45-day automatic approval if an appropriate Federal or state agency notifies the Commission within the same 45-day period that the proposed amendment would materially affect fish and wildlife resources. One commenter, however, raises the possibility that "rights will be established by the Commission's inadvertent failure to act, which is causing the Commission to propose an automatic suspension of the deadline for Commission action on the exemption application itself when a competing application is filed."

The Commission has reconsidered the advisability of these proposed new regulations and has decided not to adopt them. The proposed regulations would have been too cumbersome to apply. Moreover, they are unnecessary. The Commission advises an exemption holder that wants to change the design, location, or method of construction or operation of its project to consult with the fish and wildlife agencies to ascertain whether the agencies believe that the proposed changes would violate the exemption's fish and wildlife mitigation terms and conditions. If all the agencies advise the exemption holder that the proposed changes would not violate these terms and conditions, and if the changes are not material, the exemption holder may implement the changes without seeking prior Commission authorization. If, on the other hand, any of the agencies advises that the proposed changes would violate fish and wildlife mitigative terms and conditions, or if the changes are material, the exemption holder must, before making the changes, apply to the Commission for an amendment to its exemption or must obtain a license.

The final rule allows exemption holders to apply for authorization to amend their exemptions. The Commission normally will not accept competing applications, unless it finds it to be in the public interest to do so (e.g., if it finds that the proposed changes, had they been proposed in an exemption holder's original application, might have materially affected the decision to grant the exemption to the exemption holder). If the Commission makes such a finding, it will either reject the application for an amendment to the exemption, accept it but allow for competition for the project, or take other appropriate actions.

F. Additional Standard Terms and Conditions for Exemptions

1. Deadline to Begin Construction

To prevent an exemption holder from owning a project site for an unreasonable time without developing it, the NOPR proposed to add a new article to the standard terms and conditions for exemptions of small conduit hydroelectric facilities. That article would reserve to the Commission the right to revoke an exemption if actual construction of any proposed generating facility has not begun within two years, or if construction has not been completed within four years of the effective date of the exemption.[84] the article also would provide that, if an exemption is revoked under these conditions, the Commission would not accept any subsequent application for exemption from licensing, or a notice of

[80] 16 U.S.C. 814 (1982). *See generally* Georgia Power Co. v. Sanders, 617 F.2d 1112 (1980), *cert. denied*, 450 U.S. 936 (1980).

[81] *See* Olympus Energy Corp., 26 FERC ¶ 61,407 (1984) (*reh. pending*).

[82] Proposed §§ 4.96 and 4.104.

[83] *See* Olympus Energy Corp., 26 FERC ¶ 61,407 (1984) (*reh. pending*).

[84] Proposed § 4.94(c).

exemption from licensing, from the prior exemption holder within two years of the revocation.[85] Commenters support this proposal. The Commission is adopting it.

2. Dam Safety

Exempting a project from licensing does not relieve the Commission of its responsibilities over dam safety. The NOPR therefore proposed to add a new article [86] to the standard terms and conditions of all exemptions of small hydroelectric power projects. The article would require that, if a dam is more than 33 feet in height above streambed, impounds more than 2.5 million cubic feet of water, or is determined to have a significant or high hazard potential, the project must have periodic safety inspections by an independent consultant, and is subject to safety inspections, remedial measures, and other requirements that may be imposed by the Commission's Regional Engineer or other authorized representative under the Commission's safety regulations.[87]

A state agency argues that this new article would be an unnecessary duplication of existing state programs. It claims that for many decades western states have operated effective programs for dam safety and that this new requirement would merely create frustration and extra expense for dam operators by duplicating programs under which they already safely operate. It suggests that consistency can be obtained by revising the rule to recognize as adequate a safety certification of any state having a dam safety program, leaving the proposed rule affecting only dams in states without dam safety programs.

This issue was first raised, and answered by the Federal Power Commission (FPC), in connection with the FPC rulemaking that promulgated the Commission's dam safety provisions for licensed projects. This Commission believes it equally apt with respect to exempted projects to note that

> while some of the existing state safety inspection programs are undoubtedly of the highest calibre, it would not be conducive to the carrying out of our own responsibilities in this area to attempt to evaluate the relative effectiveness of particular state inspectoral systems, or to authorize them to be substituted for the requirements imposed upon the licensees and independent consultants by our new regulations.[88]

A state agency recommends that the rulemaking point out that state laws apply to those dams that the Commission has, by regulation, chosen not to make subject to its safety rules. Non-inclusion of the dam safety article reflects the Commission's judgment in the exercise of its responsibilities that the dam in question poses no safety hazard. The exemption holder may of course consult with any state agency with respect to any concerns that might arise on matters of safety.

3. Additional Standard Terms and Conditions Recommended By Commenters

Commenters suggest that several new standard terms and conditions be added to exemptions. The major recommendations and the Commission's response thereto are as follows:

a. Article 2 requires an exemption holder to comply with terms and conditions imposed by Federal and state fish and wildlife agencies to prevent loss of, or damage to, fish and wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act.[89] DOI suggests that Article 2 discuss the Energy Security Act.[90] Article 2 requires exemption holders to comply with all fish and wildlife mitigative terms and conditions. Inclusion of a discussion of the Energy Security Act, which authorizes the Commission to exempt certain projects, would in no way expand this requirement. The Commission therefore is not adopting DOI's recommendation.

b. Commenters make the following suggestions with respect to the Northwest Power Planning Council's Columbia Basin Fish and Wildlife Program and Northwest Conservation and Electric Power Plan (the Regional Energy Plan),[91] other comprehensive state and regional resource plans, and environmental impacts of multiple proposed projects in a river basin. First, commenters recommend that the Commission provide in its regulations that, in reviewing hydropower applications, it will consider, act consistently with, or adopt these plans and programs. Second, commenters recommend that the Commission provide in its regulations that it will consider the environmental impacts of multiple hydropower applications. Third, commenters recommend that the Commission require that applicants demonstrate in their applications whether their plans of development comply with these plans, and assess how any environmental impacts of their projects might interact with the impacts of other projects clustered in the same area.

Section 10(a) of the FPA requires that, in licensing hydropower projects, the Commission ensure that projects are best adapted to a comprehensive plan for improving or developing a waterway, for commerce, for water power development and for other beneficial public uses. The Commission considers and weighs all relevant available information when it reviews a license application. Whenever the Commission reviews any application, it considers the Columbia Basin Fish and Wildlife Program, the Regional Energy Plan, and state and other regional resource plans, if relevant. The Commission requires applicants to comply with the provisions of the plans and programs, unless the Commission determines that compliance is not in the best public interest.[92] Therefore, it is not necessary for the Commission's regulations to require it to do so. Where a number of proposed projects are clustered in one geographical area, the Commission intends to take a hard look at the

[85] A parallel article conditions exemptions for small hydroelectric power projects. *See* § 4.106(c). The rule amends this standard article to lengthen the time period in which to begin construction from 18 months to 2 years. This change is in response to several requests received by the Commission seeking an extension of the current time period. The rule also amends this standard article to restrict only the prior exemption holder that lost its exemption under this article from reapplying within two years of the exemption being revoked. The article currently restricts *anyone* from applying for an exemption for that site within two years. The Commission sees no reason to restrict persons other than the prior exemption holder from applying for an exemption for the site since the primary purpose of this restriction is to prevent persons from obtaining exemptions for the purpose of excluding others from developing the site (e.g., a property owner that does not want to develop its site, but does not want others developing it either).

[86] Proposed § 4.106(h).

[87] This article already is a standard term in all categorical exemptions. *See* § 4.111(a)(6).

[88] 35 F.P.C. 274 (1966) (FPC Docket No. R-268).

[89] 16 U.S.C. 662 (1982).

[90] Energy Security Act of 1980 section 408, 16 U.S.C. 2705(d) (1982).

[91] The Northwest Power Planning Council is an interstate compact agency created to encourage conservation and the development of renewable resources in the Pacific Northwest. The Council adopted the Columbia Basin Fish and Wildlife Program in 1982 and the Regional Energy Plan in 1983. The Commission is required to take the Columbia Basin Fish and Wildlife Program into account in its decisions "to the fullest extent practicable." 16 U.S.C. 839 (1982).

[92] With respect to the Columbia Basin Fish and Wildlife Program in particular, the Commission's decisions take the Program into account to the fullest extent practicable. Licenses issued in the Columbia River Basin include a condition reserving to the Commission the authority to impose further requirements to make the license consistent with the Columbia Basin Fish and Wildlife Program. *See, e.g.*, Yakima-Tieton Irrigation Dist., 28 FERC ¶ 61,033 (1984). Permits issued in the Basin include a condition requiring the permittee to take the program into account in preparing its fish and wildlife report in any subsequent license or exemption application. *See, e.g.*, Beaver Creek Hydro, Inc., 29 FERC ¶ 62,060 (1984).

environmental impacts of these multiple projects.[93]

In exercising this responsibility, the Commission will continue to consider all relevant plans and studies when it reviews hydropower applications.

Requiring all applicants to assess their project's contribution to the environmental impacts of clustered projects would, however, impose a substantial and often unnecessary burden on developers. In cases in which this information is needed, the Commission can acquire it under § 4.31(f).

c. Fish and wildlife agencies suggest inclusion of a new standard article expressly reserving the rights of fish and wildlife agencies to modify the fish and wildlife mitigative terms and conditions that they impose and a new standard article requiring installation of flow gauges to ascertain compliance with minimum flow requirements. As stated above, the Commission determined in the *Olympus* decision that Congress gave these agencies exclusive responsibility to impose fish and wildlife mitigative terms and conditions in exemptions. Therefore, the Commission is not including these articles in its standard articles. Rather, if the agencies believe that such articles are warranted, they may impose them when they set their mandatory terms and conditions.

e. DOI recommends adoption of a new standard article that would require exemption holders, if they later transfer ownership or operation of exempted projects, to require in the transfer documents that the transferees comply with the fish and wildlife protection terms and conditions of the exemptions. Transferees of exempted projects must comply with the terms and conditions of the exemptions. Thus, a transferee's agreement to this requirement is unnecessary. However, the Commission concurs with the basic thrust of DOI's concern—that additional provisions should ensure that transferees of exempted facilities are aware of, and comply with, an exemption's terms and conditions. The Commission is therefore adding a new standard article that requires an exemption holder: (1) To inform the Commission of a transfer of any property interests in an exempted project within 30 days of the transfer; (2) to provide the Commission with the names and addresses of the transferees; and (3) to inform the transferees of the exemption's terms and conditions.[94]

[93] *See* City of Seattle, 26 FERC ¶ 61,406, at 61,909 n.4 (1984).

[94] New §§ 4.94(f) and 4.106(i).

e. A commenter recommends adoption of a new standard article requiring compliance with terms and conditions of Indian tribes. The Commission is not adopting this recommendation because the law does not provide for Indian tribes to impose mandatory terms and conditions in exemptions. Indian tribes may submit recommended fish and wildlife mitigative terms and conditions to the specified fish and wildlile agencies. These agencies have the responsibility and authority to determine which articles to include in an exemption.[95] Indian tribes may submit all other recommended terms and conditions to the Commission. The Commission will consider them and will include those that it deems to be in the public interest.

G. Surrender of an Exemption

Until now, the Commission has had no rules governing the surrender of an exemption. The NOPR proposed to require an exemption holder to file a petition with the Commission requesting surrender of its exemption. Public notice of the petition would be given at least 30 days before the Commission acted.[96] These proposed regulations are similar to the Commission's existing regulations governing surrender of a license.[97]

Under the proposed regulations, an exemption holder would be required to state in its petition for surrender its plans for disposition of the project works and restoration of project lands. The exemption holder would also be required to notify interested Federal and state fish and wildlife agencies of its surrender plans.

If a project occupies Federal lands under a permit from a Federal agency having supervision over such lands, the exemption holder would also be required to concurrently notify that agency of the surrender plans. The NOPR explained that the Commission expects these agencies to take appropriate action to require an exemption holder to restore affected Federal lands. In approving a petition for surrender, the Commission would prescribe any necessary terms and conditions concerning disposition of the project works and restoration of the affected environment.

Commenters argue that, before the Commission authorizes the surrender of an exemption, Federal and state fish and wildlife agencies must be consulted and allowed to impose terms and conditions with respect to fish and wildlife resources. The Commission agrees.[98] Accordingly, the final rule requires that, if construction has begun, exemption holders that want to surrender their exemptions must first notify the appropriate Federal and state fish and wildlife agencies, inform them in writing of their surrender plans, and allow the agencies adequate time to review the surrender plans and to stipulate any necessary mandatory terms or conditions.

[95] *See* Olympus Energy Corp., 26 FERC ¶ 61,407 (1984) (*reh. pending*).

[96] Proposed §§ 4.95 and 4.102 would govern surrender of an exemption of a small conduit hydroelectric facility and a small hydroelectric power project, respectively.

[97] *See* §§ 6.1 and 6.2.

H. National Marine Fisheries Service Exemption Conditioning Authority

The Commission's regulations authorize NMFS, the United States Fish and Wildlife Service (USFWS), and appropriate state fish and wildlife agencies to impose conditions on all conduit and case-specific small power project exemptions.[99] However, the Commission has since determined that Congress did not authorize NMFS to impose such conditions.[100] Therefore, the NOPR proposed to amend the Commission's regulations to reflect this decision.[101]

Commenters argue that the Commission has misinterpreted Congressional intent and therefore should consider as mandatory NMFS's fish and wildlife mitigative terms and conditions. This issue is currently in litigation in the Court of Appeals for the Ninth Circuit.[102] However, unless the court determines that the Commission has misinterpreted Congressional intent, or Congress enacts new legislation providing for a different treatment of terms and conditions set by NMFS, the Commission will continue to act in a manner consistent with its prior interpretation of Congressional intent.[103]

[98] *See* Olympus Energy Corp., 26 FERC ¶ 61,407 (1984) (*reh. pending*).

[99] *See* §§ 4.94(b) and 4.106(b).

[100] *See* Winchester Water Control Dist., 24 FERC ¶ 61,080 at 61,207–08 (1983); Public Utility Regulatory Policies Act of 1978 section 218, 16 U.S.C. 823a (1982); Energy Security Act of 1980 section 408, 16 U.S.C. 2705(d) (1982).

[101] *See* proposed §§ 4.94(b) and 4.106(b).

[102] Steamboaters Inc., v. FERC, No. 83–7444 (9th Cir. June 20, 1983).

[103] The Commission determined in *Winchester* that it would review any fish and wildlife conditions proposed by NMFS and impose those that it decided were in the public interest. Subsequently, in *Olympus*, the Commission held that the USFWS and the comparable state fish and wildlife agencies have exclusive responsibility for, and authority over, fish and wildlife matters. The Commission therefore no longer reviews or imposes fish and wildlife conditions. Any agency may however request either the USFWS or the

Continued

I. Stream Flow Guidelines

As a guideline for determining whether a small hydroelectric power project would adequately use the available stream flow, the Commission's staff determines whether the instantaneous flow that a proposed project would be capable of using would be exceeded less than 25 percent of the time (i.e., the 25 percent exceedance point on the flow duration curve). If, in using this guideline, it appears to staff that the proposed project would not adequately develop the site, the applicant must demonstrate why a lesser use is nevertheless appropriate in light of relevant environmental, economic, or other constraints. Otherwise, the Commission will conclude that the exemption is not in the public interest and should not be granted.[104] The NOPR proposed to reflect this Commission practice by requiring an applicant for a case-specific exemption of a small hydroelectric power project to submit a flow duration curve.[105] The principal comments, and the Commission's response to them, are as follows:

1. Fish and wildlife agencies object that the 25 percent exceedance test does not consider instream fishery flow requirements and argue that the Commission should state clearly that the guideline is in no way related to fishery flow needs. The Commission agrees, and the final rule states that the 25 percent exceedance test is intended to consider only stream flows above required minimum streams flows.

2. DOI argues that flow duration curves should be provided for each month of the year. It argues that, if the project is to be operated in a mode other than run-of-the-river, simulated monthly flow duration curves must be provided and their derivation described. It argues that this link between the engineering and environmental sections of the application is vitally important. The Commission is not implementing this recommendation, because it is not necessary in most cases, and the Commission will request this information on a case-specific basis when it is needed.

3. DOI recommends that "justification for the instream flow selected in any bypassed reach be developed in consultation with the state and Federal fish and wildlife agencies and documentation of that consultation be provided in the Exhibit E." The Commission's consultation regulations do provide for such consultation.

4. Commenters argue that, by subjecting only exemption projects to this test, the Commission promotes the development of manmade dams and impoundments rather than natural water features and provides an incentive to build larger projects to avoid closer scrutiny during review of the application. The Commission considers and balances other uses of a region's resources against hydroelectric use, and determines the balance that it believes best uses the resources in the public interest. Commenters assume that the Commission considers efficiency in using the available stream flow only when it reviews exemption applications. The Commission considers this factor in all license and exemption applications. Commenters therefore are incorrect when they claim that requiring exemption applicants to submit flow duration curves would create an incentive to develop larger projects.

VIII. Other Changes Regarding Permits

A. Prior Notice to Cancel Permit

The NOPR proposed that the Commission would give a permittee prior notice of the Commission's intention to cancel a permit for failure to comply with the specific terms and conditions of the permit. The proposed rule acknowledges that a permittee will have an opportunity to petition for a hearing before the Commission to contest the proposed cancellation order.[106] Commenters support this proposal. The Commission is adopting it.

B. Surrender of Permit

The NOPR proposed to formalize the procedure by which a permittee surrenders an unexpired permit.[107] Under the proposed rule, a permittee would be required to file a petition to surrender its permit. Unless the Commission issued an order to the contrary, the permit would remain in effect through the thirtieth day after the Commission issued a public notice approving the surrender. The 30-day period was included to minimize unfair competitive advantages that could be obtained by orchestration of a surrender petition filed by one entity and an immediate subsequent application filed by another entity for the surrendered site. Applications for the surrendered site that are filed before the effective date of the surrender would be rejected.

A commenter argues that there could be legitimate reasons for a permittee to surrender a permit and then file an exemption or license application and that the Commission should not open up a 30-day window for competition between the surrender and the filing of the subsequent application. The commenter gives no examples. Even if there were good reasons for these actions, they are outweighed by the public interest in preserving the fairness of the competitive process. Therefore, the Commission is adopting the proposal discussed in the NOPR.

IX. Truthfulness of Applications

The Commission relies on the accuracy and truthfulness of the statements and information contained in hydroelectric permit, license, or exemption applications. Based in large part on these statements and information, the Commission grants permits, licenses, and exemptions. Therefore, the NOPR stated that the Commission needs written assurance that persons submitting applications and making statements therein have knowledge of the contents of the applications and can vouch for their accuracy. The NOPR proposed to require applicants to subscribe and verify all applications [108] and to add a new article to the standard terms and conditions of all exemptions [109] and a special article to all permits and licenses [110] that would explicitly recite the Commission's right to revoke any of these authorizations if any inaccurate material information was presented during the application process.

While commenters generally favor adoption of this proposal, they make the following comments. First, a commenter questions whether the rule would apply to exhibits and drawings that are a part of an application, and whether the rule would apply to additional information requested at a later time by Commission staff. All submissions of relevant information, whenever filed, must be subscribed and verified.

Second, a commenter recommends that, because applicants do not always have a copy of the Commission's Rules of Practice and Procedure, the form for subscription and verification be set forth in some general section, such as § 4.32. The final rule includes the form in § 4.32.

Third, a commenter recommends that the Commission automatically revoke

comparable state agencies to adopt its recommendations as part of their mandatory terms and conditions.

[104] *See* Pacific Hydro, Inc., 28 FERC ¶ 61,014 (1984).

[105] Proposed § 4.107(c)(5).

[106] Proposed § 4.83(a).

[107] Proposed § 4.84.

[108] Proposed § 4.32(a)(3).

[109] Proposed §§ 4.94(e) and 4.106(g).

[110] Standard terms and conditions for permits and licenses are not published in the Code of Federal Regulations.

any authorization if the applicant knowingly submits inaccurate data. Because revocation of any authorization is a drastic step, usually having serious economic effects, the Commission will decide whether to take such action on a case-specific basis.

X. Amendment to Applications and New Filing Dates

The NOPR proposed to amend § 4.35 in the following three ways. First, a new filing date would be assigned to a permit, exemption, or license application (or an application to amend a license when the amendment would increase installed capacity) when such an application is materially amended. This is the general rule of § 4.35. However, it has previously been applied only to license and permit applications. The NOPR proposed to define a material amendment to be: (1) A change in generating units that would significantly modify the flow regime associated with the project; (2) a change in design or location of project works that would increase or decrease the reach of the stream affected by the project or would cause additional adverse environmental impacts; or (3) a change in the number of discrete units of development of the project. Under the proposed rule, if an application were materially amended, the staff would review it to determine whether the application, as revised, complied with applicable regulations as to content of the application. Acceptance, deficiency, or rejection letters would be prepared pursuant to the Commission's normal practice in reviewing applications. The Commission would consider any acceptance letter that may have been issued for the original application to be automatically rescinded upon acceptance of the amendment to the application.

Second, the NOPR proposed to define a change in "status," one of the material changes to an application that triggers § 4.35, to mean a change that causes a preliminary permit or license applicant to gain or lose municipal preference under section 7(a) of the FPA or that cause a permittee to lose its priority status under section 5 of the FPA. Prospective applicants should know at the time another applicant files whether that applicant has municipal preference or priority status as a permittee. This knowledge could affect a prospective applicant's decision whether to compete and may help the Commission to streamline its processing of applications.[111]

Third, the NOPR proposed to define a change in "identity," another of the material changes to an application that triggers § 4.35, to be a change that substitutes new applicants for *all* the original applicants.[112] This total substitution can be made in one or more amendments to an application. The amendment that substitutes the last remaining original applicant would trigger § 4.35, resulting in the assignment of a new date of "acceptance for filing." Future total substitutions of the new set of applicants could again trigger § 4.35. Again, prospective and competing applicants should know against whom they are competing. The rule bars transfers of applications both out of fairness to competing applicants and to allow orderly administration of the licensing program.

Recommended changes to § 4.35 and the Commission responses to them are as as follows:

1. With respect to changes in "identity," commenters generally favor the rule that allows changes in some, but not all, of the original co-applicants, without triggering § 4.35. However, other commenters believe that any addition or deletion of an original co-applicant should trigger § 4.35. The Commission believes that its proposed rule, which allows some, but not all, original co-applicants to be substituted without triggering § 4.35, to be proper. It prevents applicants from transferring their applications by totally substituting all the original co-applicants. It allows partial substitution of partners because this does not normally affect competition.

2. With respect to material amendments to application with regard to environmental issues, one commenter argues that the Commission should extend to license applications the proposed new provision that would allow exemption applicants to change their plans as part of a settlement agreement with fish and wildlife agencies without triggering § 4.35. The Commission agrees, and the final rule allows both exemption and license applicants to change their plans to satisfy requests of fish and wildlife agencies, without triggering § 4.35.

3. One commenter recommends that, if there are other material changes besides those delineated in the proposed regulation, they all be specified in § 4.35. The examples given in § 4.35 are intended only to demonstrate the types of changes that the Commission considers "material." The Commission cannot foresee and therefore cannot prescribe in § 4.35 every "material" change.

4. One commenter argues that § 4.35 should apply to only situations that involve actual competition, and that "material" amendments should be limited to amendments that totally alter the project concept or that cause great environmental impact. The Commission disagrees. A material change in an application can encourage competition by persons that previously did not want to compete or that could not successfully compete.

5. One commenter argues that applicants who materially amend their proposed plans of development should be required to serve the Federal and state fish and wildlife agencies with such a proposed amendment and to reconsult to mitigate for any expected impact on fish and wildlife resources. The Commission agrees. If an amendment to an applicant's proposed plans could affect fish and wildlife resources, applicants must serve copies of the amendment on the agencies and reconsult.

6. One commenter requests that the Commission implement retroactively the new rule allowing a partial substitution of partners, without triggering § 4.35. Regulations are generally applied prospectively, not retroactively. All parties should know the rules under which they are operating. The Commission does not find any compelling reason to apply this new rule retroactively.

7. One commenter recommends that the Commission provide that, where a permit is held by more than one party, a license or an exemption application filed during the permit period by any of the applicants is entitled to priority over all competing non-permit holders. The Commission is precluded by law from doing this. The FPA provides that a permit "shall be for the sole purpose of maintaining priority of application for a license application," and that permits are not transferable.[113] A permit is issued to a person or a particular group of persons. Only that person or particular group of persons is entitled to priority.

XI. Municipal Preference

Section 7(a) of the FPA directs the Commission "[i]n issuing preliminary permits hereunder or licenses where no preliminary permit has been issued" to give preference to applications by states and municipalities. In the *City of*

[111] Because municipal status is irrelevant to an exemption application under the applicable statutes, a change in "status" would not be a material change to an exemption application and therefore would not trigger § 4.35.

[112] *See* Noah Corp., 19 FERC ¶ 61,276 and 20 FERC ¶ 61,156 (1982).

[113] Section 5 of the FPA, 16 U.S.C. 798 (1982).

Fayetteville decision,[114] the Commission concluded that the legislative design of the FPA precludes giving municipal preference to "hybrid" applications filed jointly by private developers and municipalities. In that case, the Commission expressed its concern that a municipality's participation in power development should represent more than tokenism to receive this statutory preference. In *Fayetteville,* the Commission stated that, in order to retain its entitlement to municipal preference as the party who intends to be the licensee, a municipality must retain control over the operation of a project in its contractual relationships with private entities and it must not relinquish any property or other rights necessary for project purposes. However, at the same time, the Commission emphasized that municipal preference need not be jeopardized by contractual arrangements that a municipality may make with private entities for assistance in financing, studying, or constructing or operating a project, provided that such arrangements are consistent with license ownership and control requirements.

The NOPR said that the Commission was considering promulgating guidelines to help prospective applicants determine the range of contractual relationships between a private entity and a municipality that would be allowed without jeopardizing the right to municipal preference. The Commission specifically invited public comment and suggestions with respect to guidelines to distinguish between (a) those types of contractual relations between private entities and municipalities that should not disqualify an applicant from receiving municipal preference under section 7(a) of the FPA and (b) those contractual relationships that should preclude municipal preference.

In reviewing the comments filed, the Commission has concluded that any regulations specifically describing financing arrangements that would not jeopardize a municipality's entitlement to preference would be confusing and counter-productive. The variety of such financing arrangements makes detailed regulations impractical. Furthermore, the basic principles to be applied in determining whether a municipality would create an impermissible hybrid joint venture in its financing arrangements were clearly set forth in *Fayetteville:* "the municipality must retain in such contractual relationships requisite control over the operation of the project and may not relinquish any property or other rights necessary for project purposes."[115] To the extent that partial private ownership of project property is required, the municipality must pursue its application as a hybrid with no recourse to municipal preference under section 7(a).[116]

The comments reveal neither significant confusion about what the current requirements are nor any need for clarification of how they are to be applied. Rather, those comments that set forth proposals to increase financing flexibility for municipal licensees essentially request that the Commission reconsider fundamental issues raised and resolved in the Fayetteville decision. The Commission continues to believe that the ruling in *Fayetteville* represents a reasonable interpretation of the availability of municipal preference under section 7(a). Joint municipal/non-municipal ownership and development of a project is perfectly appropriate, but, as the Commission decided in *Fayetteville,* it must proceed without the benefit of statutory municipal preference.

XII. Other Amendments

A. Sites Authorized for Only Federal Development

The NOPR proposed to clarify that, although an applicant may not apply for a preliminary permit or license for project works that are authorized for Federal development exclusively, an applicant may submit a preliminary permit or license application for project works authorized for both Federal and private development.[117] The final rule simply precludes filing an application for any project that is precluded by law.[118] Filing an application for a project that would develop a site reserved exclusively for Federal development is now clearly proscribed under § 4.32(d)(2). Thus, there is no need for the specific provision proscribing application for a project that would use a site authorized exclusively for Federal development.[119]

B. Rejection of Conditional Applications

The NOPR proposed to codify the Commission's practice of rejecting any application as patently deficient if its effectiveness is conditioned upon the occurrence of some future event or circumstance.[120]

A commenter argues that the Commission should accept an application to amend an original license to accelerate a license's termination date that is filed on the condition that the Commission grant an application for a new license filed by the original licensee. The commenter argues that, near the end of a license period, no licensee would invest in costly improvements to its project if it were not assured that it would be granted a new license for the improved project. Otherwise, by improving its project, it would be investing capital that it could not recover during the remaining life of the original license.

The processing and consideration of such conditional applications would obstruct the Commission's statutory responsibility to ensure that the relicensing process is open to competition by any qualified applicant. It is not in the public interest to institute a relicensing proceeding where no meaningful competition can exist and where the expenditure of staff resources to analyze the relicense application would be for naught if the conditional application were withdrawn.[121]

C. Absence of Proof of Service

The NOPR proposed to reflect the Commission's practice of not finding a competing application to be patently deficient merely because it does not include proof of service on other applicants.[122] When a competing application fails to include proof of service, the Commission allows the competing applicant to correct this deficiency, provided other deficiencies in the application do not make the application patently deficient.[123] This treatment assures adequate notice to competitors while not unduly penalizing applicants that fail to make timely notifications. Commenters support this proposal. The Commission is adopting it.

D. Motions To Intervene

Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) governs the processing of motions to

[114] City of Fayetteville Public Works Comm., 16 FERC ¶ 61,209 (1981).

[115] *Id.*

[116] A number of recent Commission decisions have addressed the question of rights necessary for project purposes and who must be made a licensee. *See e.g.,* Little Falls Hydroelectric Assocs., 28 FERC ¶ 61,214 (1984), 29 FERC ¶ 61,001 (1984); City of Vidalia, 28 FERC ¶ 61,328 (1984); Boott Mills, 25 FERC ¶ 61,386 (1983).

[117] Proposed § 4.33(a)(1) and (b)(1).

[118] Section 4.32(d)(2).

[119] Proposed § 4.33(a) and (b).

[120] Proposed § 4.32(i)

[121] *See* Niagara Mohawk Power Corp., 20 FERC ¶ 61, 454 (1982).

[122] Sections 4.31(d)(2)(i) and 4.33(d)(2).

[123] Proposed § 4.32(d)(2).

intervene in all Commission proceedings, including hydroelectric matters. Therefore, the NOPR proposed to remove the redundant part of § 4.32(h) that describes the intervention procedure.[124] No commenters discuss this proposal. The Commission is adopting it for the reasons set out in the NOPR.

E. Deadlines for Submitting Additional Information

The Commission can require any applicant to submit additional copies of an application or any additional information or documents that the Commission considers relevant.[125] The regulations do not provide a time limit for compliance with such a request. The NOPR proposed to codify the Commission's current requirement that, when an applicant is required to submit additional copies, it must do so within the time specified in the Commission's request. This rule would apply to information that the Commission seeks for itself or that the Commission orders to be furnished to other persons, agencies or entities.[126] No commenters discuss this proposal. The Commission is adopting it for the reasons discussed in the NOPR.

F. Notice to Municipalities

Under section 4(f) of the FPA, the Commission must give written notice to any municipality that is likely to be interested in, or affected by, a pending preliminary permit or license application.[127] The Commission gathers information about political subdivisions in the project area and determines which of them should be given written notice.[128]

The Commission could better implement section 4(f) of the FPA if permit and license applicants were to provide the Commission with lists of local political subdivisions in their areas. Therefore, the NOPR proposed to require permit and license applicants to identify those political subdivisions that meet certain criteria related to whether those local political subdivisions would likely be interested in their applications. Applicants also would be required to identify any other political subdivisions that they believe would be interested in their applications. Consistent with the Commission's policy in issuing section 4(f) notices, a political subdivision's ability to "engage in the business of developing, transmitting, utilizing, or distributing power," which determines whether it qualifies as a "municipality" under section 3(7) of the FPA,[129] would have no bearing on whether it should be identified by an applicant under proposed § 4.32(b).[130] The Commission would meet its section 4(f) obligations by notifying the political subdivisions identified in an applicant's list.

Commenters that oppose the proposal argue that: (1) It would be overly burdensome to prospective applicants; (2) the proposed rule, which would require applicants to identify all political subdivisions that they believe are likely to be interested in, or affected by, their applications, is extremely vague; and (3) the proposed rule would result in legal challenges by municipalities that were omitted from an applicant's list and therefore never notified of Commission acceptance of its application. Also, one commenter questions whether the Commission has the authority under section 4(f) to delegate to applicants the responsibility for identifying all interested or affected government entities.

Identifying municipalities that must be sent written notice is one of the steps that must be taken to process a permit or license application. The Commission can reasonably require applicants to prepare such lists. Furthermore, based on their familiarity with project areas, applicants should be more able than the Commission's staff to quickly identify the municipalities.

The Commission believes that it may lawfully require applicants to prepare the lists because the Commission may require applicants to submit all information necessary to the processing and consideration of an application. While the obligation to comply with the statute remains with the Commission, the Commission clearly can require applicants to provide information necessary for it to do so.[131]

For the most part, the proposed regulation is specific about which entities applicants must include on their lists. While the requirement that applicants identify political entities that they believe are likely to be interested in, or affected by, an application is less precise, applicants should have no difficulty complying with it. Most, if not all, such political subdivisions will already have been identified by applicants under proposed § 4.32(b)(2)(i)–(iii).

The final rule now clarifies the reporting requirements in the following ways. First, the terms "borough" and "township" are being deleted from § 4.32(b)(2)(ii) to clarify that this requirement refers to general purpose local governments and not to entities such as land survey townships (the reference to "borough," which is akin to a city or town, is superfluous).[132] Second, political subdivisions of exactly 5,000 people are being included in § 4.32(b)(2)(ii)(B), to conform to current practice.[133] Third, to clarify the regulation, the geographical limitation in § 4.32(b)(2)(ii)(B) is measured from the project dam (or diversion).

G. Timely Submission of Amendments to Applications

The NOPR proposed to remind applicants that amendments to cure deficient applications must be timely submitted. Also, the NOPR proposed to provide that the Director of the Office of Electric Power (the Director of the Office of Hydropower Licensing in the final rule), under delegated authority, would reject applications as patently deficient only within 45 days of filing.[134] Thereafter, such applications could be treated as deficient under § 4.32(d)(1), which allows the applicant an opportunity to cure the deficiencies. The Commission (but not the Director) could reject such applications as patently deficient after the 45-day period.[135]

Commenters suggest that proposed § 4.32(d) inadequately explains the differences between treatment of applications that are "deficient" and those that are "patently deficient." The Commission notifies applicants that have filed "deficient" applications of the specific deficiencies and specifies times within which to cure the deficiencies. Applications that are cured within the times allowed retain their "acceptance for filing" dates and are reviewed by the

[124] Proposed § 4.32(h).

[125] Section 4.31(f).

[126] Proposed § 4.32(f).

[127] 16 U.S.C. 797(f) (1982).

[128] *See* City of Idaho Falls, 29 FERC ¶ 61,066 (1982).

[129] 16 U.S.C. 796(7) (1982).

[130] *See* Allegheny Electric Coop., Inc., 29 FERC ¶ 61,208 (1984).

[131] Shortly after the notice of the proposed rule was issued, the District of Columbia Circuit Court of Appeals issued its Northern Colorado Water Conservancy Dist. v. FERC decision. 730 F.2d 1509 (D.C. Cir. 1984). The court rejected the Commission's contention that special purpose political subdivisions, such as drainage districts and irrigation districts, were not entitled to written notice of applications under Section 4(f) of the FPA. The rule amends Commission practice and implements this decision.

[132] Townships such as Potter Township, Pennsylvania (*see* Allegheny Electric Coop., 29 FERC § 61,208 (1984)) will be included as local political subdivisions similar to towns and cities.

[133] *See* city of Idaho Falls, 20 FERC § 61,066 (1982).

[134] The final rule provides the Director of the Office of Hydropower Licensing with 60 days rather than 45 days in which to reject applications under delegated authority. Sixty days more closely approximates the average time necessary for staff to review and analyze an application.

[135] Proposed § 4.32(d)(2).

Commission. The Commission rejects "patently deficient" applications. These applicants must cure the deficiencies and refile their applications. The refiled applications are assigned new "acceptance for filing dates."

Commenters request the Commission to explain the standards used to make the distinction between "deficient" and "patently deficient" and to give examples of the different types of deficiencies that cause applications to be classified as one or the other. The Commission rejects as "patently deficient" any application that fails in any material respect either to comply with the Commission's substantive requirements or to supply the required information necessary to consider the application on its merits. Applications are most often rejected for failing to meet substantive requirements because they fail to include all required exhibits or results of studies.

The Commission also rejects as "patently deficient" applications for projects which the Commission is precluded by law from licensing or exempting from licensing. Examples of applications that are rejected for this reason are projects for which the waterways proposed to be developed are located in national parks and therefore proscribed from hydroelectric development [136] or because the project site is reserved exclusively for Federal development.[137]

Some applications basically provide the Commission with all the necessary information but are deficient in some minor respect that can be cured in a short time. Rather than reject these applications, the Commission notifies the applicants of the specific deficiencies and affords them specified times within which to cure the deficiencies.

The final rule clarifies the Commission's current rules for rejecting applications that fail to meet the Commission's substantive requirements or that propose to develop projects that by law cannot be licensed or exempted from licensing.

H. Conforming Project Boundary Requirements

The NOPR proposed to conform the requirements for describing project boundaries in an application for license for either a major unconstructed project or major modified project or a major project—existing dam.[138]

DOI's Bureau of Land Management (BLM), which manages U.S. lands, submitted comments concerning the withdrawal of U.S. lands pursuant to section 24 of the FPA once an application is accepted for filing. Section 24 provides, in part, that any

> lands of the United States included in any proposed project under the provisions of [Part I of the FPA] shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located.[139]

BLM has submitted the following requests for technical changes to the Commission's regulations with respect to section 24.

1. BLM requests that proposed § 4.32(c)(1) and the public notice of acceptance for filing of a permit or a license application state that, upon the filing of an application, all affected U.S. lands are reserved under section 24. Because section 24 specifically provides this, the Commission does not believe it necessary to state it in the regulations.

2. Section 4.81 of the Commission's regulations prescribes the reporting requirements for a permit application. BLM argues that § 4.81 is too flexible in its requirements for providing in the application a list of affected U.S. lands and an adequate map from which these lands can be identified. BLM asserts that, as a result of this flexibility, BLM is provided with inadequate information to reserve the affected U.S. lands. The Commission believes that its regulations are sufficiently precise. However, the Commission's staff will thoroughly review permit applications to ensure that they provide sufficient information for BLM's purposes.

3. Section 4.35 assigns new "acceptance for filing" dates to applications when they are materially amended. BLM suggests that § 4.35 should indicate that a newly assigned "acceptance for filing" date will also be considered the effective date for the withdrawal of U.S. lands, if that is the Commission's intention. That is not the Commission's intention. Section 4.35 assigns new "acceptance for filing" dates for the purposes of filing deadlines and competition. It is not intended to change the date on which U.S. lands are reserved under section 24 of the FPA. However, § 4.35 can affect the date on which U.S. lands are withdrawn when an amendment to an application would cause the proposed project to affect additional U.S. lands. The filing date of such an amendment is the date on which these additional affected U.S. lands are reserved.

4. Proposed § 4.41(h)(2) requires applicants for a license for a major unconstructed project or a major modified project to include in their applications the "project boundary enclosing the project works and other features." In states covered by a public land survey, § 4.41(h)(2) requires that ties be shown at sufficient points to permit accurate plotting of the position of the boundary relative to the lines of the public land survey. In states not covered by public land surveys, it requires the best available legal description of the position of boundaries, including distances and directions from fixed monuments or physical features.

BLM requests the Commission to require applicants in states not covered by public land surveys to use only an acceptable land survey approved by BLM. The Commission believes that proposed § 4.41(h) prescribes adequate requirements. However, the Commission's staff will review applicants' land descriptions and maps to ensure that they are sufficient for BLM's purposes.

5. The Commission has reviewed its other regulations to determine whether they require applicants to submit descriptions of U.S. lands adequate for BLM to withdraw affected U.S. lands. The Commission finds that § 4.61, which prescribes the requirements for application for minor water power projects and major water power projects of five megawatts or less should be clarified to ensure that applicants proposing projects that would affect U.S. lands identify in Exhibit G of their applications the affected U.S. lands so that BLM may withdraw these lands pursuant to section 24. Therefore, the final rule clarifies these requirements.[140]

XIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612 (1982), requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the RFA, the Commission certified in the NOPR that

[136] 16 U.S.C. 796(2), 797(e) (1982).

[137] *See* Chapman v. FPC, 191 F.2d 796 (4th Cir. 1951), *aff'd*, 345 U.S. 153 (1953).

[138] Proposed §§ 4.41 and 4.51. No commenters discuss this proposal. It is being adopted, with one change related to the use of tentative boundaries in cases in which accurate survey information is unavailable. This language currently appears in § 4.41(h)(2).

[139] 16 U.S.C 818 (1982).

[140] New § 4.61(f)(4)(iii).

this rulemaking will not have a significant economic impact on a substantial number of small entities.

The primary purposes of this rule are to: (1) Clarify procedures already established for filing applications for a preliminary permit, a license, and an exemption from licensing for hydroelectric projects; (2) codify recent decisions of the Commission affecting these types of applications; and (3) reorganize certain sections of the regulations governing hydroelectric applications. The codification of Commission decisions and the reorganization of certain sections have no economic impact because they do not significantly change the substance of existing regulations and case law requirements. Other rules are mostly procedural and, in any case, are minor in effect on any potential applicants. Thus, the Commission stated in the NOPR that the proposed rule would cause no substantial economic impact on any entity, large or small.

Commenters argue that the rulemaking will have such an effect by affecting commercial fishing dependent on fish habitat, by expanding the "maximum levels of competition," and by expanding pre-filing consultation requirements.

The Commission continues to believe that the rulemaking will not have a significant economic effect on a substantial number of small entities. First, fish habitat will not be affected by promulgation of this rulemaking. The rulemaking does not authorize the construction or operation of any projects. Only issuance of a license or an exemption does. Second, the rulemaking does not expand competition. It merely codifies or revises some of the procedural rules governing competition. Finally, the rulemaking does not expand pre-filing consultation requirements. It merely formalizes the existing requirements.

XIV. Finding of No Significant Impact

The NOPR stated that the Commission had determined that the codification of Commission decisions, clarification, and reorganization of the regulations would not be a major Federal action significantly affecting the quality of the human environment. Therefore, under the National Environmental Policy Act of 1969,[141] neither an environmental assessment nor an environmental impact statement was necessary.

Commenters argue that the rulemaking will have such an effect. However, the rulemaking does not authorize the construction or operation of any projects and therefore will not affect the environment nor will it encourage or discourage further applications. The Commission has determined that it can best meet the requirements of the National Environmental Policy Act by considering environmental impacts when it and the fish and wildlife agencies review each license and exemption application.

[141] 42 U.S.C. 4321–4347 (1982).

XV. Effective Date and Paperwork Reduction Act Statement

The information collection provisions in this proposed rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR 1320.13 (1984). Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426 (Attention: Joseph H. Long, (202) 357–8526). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will become effective June 10, 1985. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects in 18 CFR Part 4

Electric power.

In consideration of the foregoing, the Commission amends Part 4, Subchapter B, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—[AMENDED]

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1382); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

2. The heading for Subpart D of Part 4 is revised to read as follows:

Subpart D—Application for Preliminary Permit, License or Exemption: General Provisions

3. Section 4.30 is revised to read as follows:

§ 4.30 Applicability and definitions.

(a) This subpart applies to any application for preliminary permit, license, or exemption from licensing.

(b) For the purposes of this Part—

(1)(i) "Competing development application" means any application for a license or exemption from licensing for a proposed water power project that would develop, conserve, and utilize, in whole or in part, the same or mutually exclusive water resources that would be developed, conserved, and utilized by a proposed water power project for which an initial preliminary permit or initial development application has been filed and is pending before the Commission.

(ii) "Competing preliminary permit application" means any application for a preliminary permit for a proposed water power project that would develop, conserve, and utilize, in whole or in part, the same or mutually exclusive water resources that would be developed, conserved and utilized by a proposed water power project for which an initial preliminary permit or initial development application has been filed and is pending before the Commission.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. The term "not primarily for the generation of electricity" includes but is not limited to a conduit:

(i) Which was built for the distribution of water for agricultural, municipal, or industrial consumption and is operated for such a purpose; and

(ii) To which a hydroelectric facility has been or is proposed to be added.

(3) "Construction of a dam," for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility, means any construction, repair, reconstruction, or modification of a dam that creates a new impoundment or increases the normal maximum surface elevation or the normal maximum surface area of an existing impoundment.

(4(i) "Dam," for the purposes of provisions governing application for license of a major project—existing dam, means any structure for impounding or diverting water.

(ii) "Dam," for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility, means any structure that impounds water.

(iii) "Dam," for the purposes of provisions governing application for exemption of a small hydroelectric power project, means any structure for impounding water which is usable for electric power generation if the impoundment supplies all, or the substantial part of, the total hydroelectric pressure (head) developed for such generation.

(5) "Development application" means any application for either a license or exemption from licensing for a proposed water power project.

(6)(i) "Existing dam," for the purposes of provisions governing application for license of a major project—existing dam, means any dam (as defined in paragraph (b)(4)(i) of this section) that has already been constructed and which does not require any construction or enlargement of impoundment structures other than repairs or reconstruction.

(ii) "Existing dam," for the purposes of provisions governing application for exemption of a small hydroelectric power project, means any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project.

(7) "Existing impoundment," for the purposes of provisions governing application for license of a major project—existing dam, means any body of water that an existing dam impounds.

(8) "Federal lands," for the purposes of provisions governing application for exemption of a small hydroelectric power project, means any lands to which the United States holds fee title.

(9) "Fish and wildlife agencies" means the U.S. Fish and Wildlife Service and any state agency with administrative management over fish or wildlife resources of the state or states in which the small conduit hydroelectric facility or small hydroelectric power project is or will be located.

(10)(i) "Initial development application" means any acceptable application for either a license or exemption from licensing for a proposed water power project that would develop, conserve, and utilize, in whole or in part, water resources for which no other acceptable application for a license or exemption from licensing has been submitted for filing and is pending before the Commission.

(ii) "Initial preliminary permit application" means any acceptable application for a preliminary permit for a proposed water power project that would develop, conserve, and utilize, in whole or in part, water resources for which no other acceptable preliminary permit application has been submitted for filing and is pending before the Commission.

(11) "Initial license" means the first license issued for a water power project under either the Federal Water Power Act of 1920 or the Federal Power Act.

(12) "Install or increase," for the purposes of provisions governing application for exemption of a small hydroelectric power project, means to add new generating capacity at a site that has no existing generating units, to replace or rehabilitate an abandoned or unused existing generating unit, or to increase the generating capacity of any existing power plant by installing an additional generating unit or by rehabilitating an operable generating unit in a way that increases its rated electric power output.

(13) "Licensed water power project" means a project, as defined in section 3(11) of the Federal Power Act, that is licensed under Part I of the Federal Power Act.

(14) "Major modified project" means any major project—existing dam, as defined in paragraph (b)(16) of this section, that would include:

(i) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or the normal maximum surface elevation of an existng impoundment; or

(ii) Any change in existing project works or operations that would result in a significant environmental impact.

(15) "Major unconstructed project" means any unlicensed water power project that would:

(i) Have a total installed generating capacity of more than 1.5 MW; and

(ii) Use the water power potential of a dam and impoundment which, at the time application is filed, have not been constructed.

(16) "Major project—existing dam" means a licensed or unlicensed, existing or proposed water power project that would:

(i) Have a total installed generating capacity or more than 2,000 horsepower (1.5 MW); and

(ii) Not use the water power potential provided by any dam except an existing dam.

(17) "Minor water power project" means any licensed or unlicensed, existing or proposed water power project that would have a total installed generation capacity of 2,000 horsepower (1.5 MW), or less.

(18) "New development," for the purposes of provisions governing application for license of a major project—existing dam, means any construction, installation, repair, reconstruction, or other change in the existing state of project works or appurtenant facilities, including any dredging and filling in project waters.

(19) "New license" means any license, except an annual license issued under section 15 of the Federal Power Act, for a water power project that is issued under the Federal Power Act after the initial license for that project.

(20)(i) "Non-Federal lands," for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility, means any lands except lands to which the United States holds fee title.

(ii) "Non-Federal lands," for the purposes of provisions governing application for exemption of a small hydroelectric power project, mean any lands other than Federal lands defined in paragraph (b)(8) of this section.

(21) "Person" means any individual and, as defined in section 3 of the Federal Power Act, any corporation, municipality, or state.

(22) "Project," for the purposes of provisions governing application for exemption of a small hydroelectric power project, means:

(i) The impoundment and any associated dam, intake, water conveyance facility, power plant, primary transmission line, and other appurtenant facility if a lake or similar natural impoundment or a manmade impoundment is used for power generation; or

(ii) Any diversion structure other than a dam and any associated water conveyance facility, power plant, primary transmission line, and other appurtenant facility if a natural water feature other than a lake or similar natural impoundment is used for power generation.

(23) "Qualified exemption applicant" means any person who meets the requirements specified in § 4.31(c)(2) with respect to a small hydroelectric power project for which exemption from licensing is sought.

(24) "Qualified license applicant" means any person to whom the Commission may issue a license, as specified in section 4(e) of the Federal Power Act.

(25) "Real property interests," for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility or a small

hydroelectric power project, includes ownership in fee, rights-of-way, easements, or leaseholds.

(26) "Small conduit hydroelectric facility" means an existing or proposed hydroelectric facility that is constructed, operated, or maintained for the generation of electric power, and includes all structures, fixtures, equipment, and lands used and useful in the operation or maintenance of the hydroelectric facility, but excludes the conduit on which the hydroelectric facility is located or the transmission lines associated with the hydroelectric facility and which:

(i) Utilizes for electric power generation the hydroelectric potential of a conduit;

(ii) Is located entirely on non-Federal lands, as defined in paragraph (b)(20)(i) of this section;

(iii) Has an installed generating capacity of 15 MW or less;

(iv) Is not an integral part of a dam;

(v) Discharges the water it uses for power generation either:

(A) Into a conduit;

(B) Directly to a point of agricultural, municipal, or industrial consumption; or

(C) Into a natural water body if a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located; and

(vi) Does not rely upon construction of a dam, which construction will create any portion of the hydrostatic head that the facility uses for power generation unless that construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(27) "Small hydroelectric power project" means any project in which capacity will be installed or increased after the date of notice of exemption or application under Subpart K, which will have a total installed capacity of not more than 5 MW, and which:

(i) Would utilize for electric power generation the water power potential of an existing dam that is not owned or operated by the United States or by an instrumentality of the Federal Government, including the Tennessee Valley Authority; or

(ii)(A) Would utilize for the generation of electricity a natural water feature, such as a natural lake, waterfall, or the gradient of a natural stream, without the need for a dam and man-made impoundment;

(B) Would not retain water behind any struture for the purpose of a storage and release operation; and

(C) Except as otherwise permitted under § 4.103(c)(2), would contain a diversion or intake structure that;

(*1*) Is not higher than two times the diameter of the penstock or intake pipeline, not to exceed ten feet in total height, as measured from the lowest point of the natural streambed at the downstream toe of the structure to the normal water surface level retained by the structure assuming a no-spill condition;

(*2*) Does not retain more than two acre-feet (2,467 cubic meters) of water behind the diversion or intake structure; and

(*3*) Does not increase the existing, naturally occurring hydraulic head of the natural water feature more than five (5) percent.

4. Section 4.31 is revised to read as follows:

§ 4.31 Initial or competing application: who may file.

(a) *Application for a preliminary permit or a license.* Any citizen, association of citizens, domestic corporation, municipality, or state may submit for filing an initial application or a competing application for a preliminary permit or a license for a water power project under Part I of the Federal Power Act.

(b) *Application for exemption of a small conduit hydroelectric facility.*—(1) *Exemption from provisions other than licensing.* Any citizen, association of citizens, domestic corporation, municipality, or state that has all of the real property interests in the lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of a small conduit hydroelectric facility from provisions of Part I of the Federal Power Act, other than licensing provisions.

(2) *Exemption from licensing.* Any person having all the real property interests in the lands necessary to develop and operate the small conduit hydroelectric facility, or an option to obtain those interests, may apply for exemption of that facility from licensing under Part I of the Federal Power Act.

(c) *Application for case-specific exemption of a small hydroelectric power project.*—(1) *Exemption from provisions other than licensing.* Any qualified license applicant or licensee seeking amendment of its license may apply for exemption of the related project from provisions of Part I of the Federal Power Act other than licensing provisions.

(2) *Exemption from licensing.*—(i) *Only Federal lands involved.* If only rights to use or occupy Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any person may apply for exemption of that project from licensing.

(ii) *Some non-Federal lands involved.* If real property interests in any non-Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any person who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of that project from licensing.

§ 4.32 [Redesignate as § 4.39]

5. Section 4.32 is redesignated as § 4.39.

6. A new § 4.32 is added to read as follows:

§ 4.32 Acceptance for filing or rejection.

(a) Each application must:

(1) For a preliminary permit or license, identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project;

(2) For a preliminary permit or a license, identify (providing names and mailing addresses):

(i) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

(ii) Every city, town, or similar local political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project; and

(iv) Every other political subdivision in the general area of the project that the applicant believes may be likely to be interested in, or affected by, the application.

(3)(i) As to any facts alleged in the application or other materials filed, be

subscribed and verified under oath in the form set forth in paragraph (a) (3)(ii) of this section by the person filing, an officer thereof, or other person having knowledge of the matters sent forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it shall include a statement of the reasons therefor.

(ii) This (application, etc.) is executed in the

State of ———————————

County of ———————————

by:———————

(Name) ——————— ———————

(Address) ———————————

being duly sworn, depose(s) and say(s) that the contents of this (application, etc.) are true to the best of (his or her) knowledge or belief. The undersigned applicant(s) has (have) signed the (application, etc.) this ——— day of ————, 19——.

(Applicant(s))

By: ———————————

Subscribed and sworn to before me, a [Notary Public, or title of other official authorized by the state to notarize documents, as appropriate] of the State of ——— this day of ————, 19——.

/SEAL/ [if any]

(Notary Public, or other authorized official)

(4) Contain the information and documents prescribed in the following sections of this chapter, according to the type of application:

(i) Preliminary permit: § 4.81;

(ii) License for a minor water power project and a major water power project 5 MW or less: § 4.61;

(iii) License for a major unconstructed project and a major modified project: § 4.41;

(iv) License for a major project—existing dam: § 4.51;

(v) License for a transmission line only: § 4.71;

(vi) Nonpower license for a licensed project: § 16.7;

(vii) Exemption of a small conduit hydroelectric facility: § 4.92; or

(viii) Case-specific exemption of a small hydroelectric power project: § 4.107.

(b)(1) Each applicant for a preliminary permit or a license must submit to the Commission's Secretary for filing an original and fourteen copies of the application and five sets of full-sized prints. The applicant must serve one copy of the application on the Commission's Regional Engineer for the appropriate region and on each consulted agency. The application may also include reduced prints of maps and drawings conforming to § 4.39(d). The originals (microfilm) of maps and drawings included in a license application under § 4.39(a) are not to be filed initially, but will be requested pursuant to paragraph (c) of this section.

(2) Each applicant for exemption must submit to the Commission's Secretary for filing an original and fourteen copies of the application and five sets of full-sized prints. An applicant must serve one copy of the application on the Commission's Regional Engineer for the appropriate region and on each consulted agency. Maps and drawings need not conform to the requirements of § 4.39, but must be of sufficient size, scale, and quality to permit easy reading and understanding. The original (microfilm) of maps and drawings are not to be filed initially, but will be requested pursuant to paragraph (c) of this section.

(c) When any application is found to conform to the requirements of paragraphs (a) and (b) of this section, the Commission or its delegate will:

(1) Notify the applicant that the application has been accepted for filing, specifying the project number assigned and the date upon which the application was accepted for filing, and, for a license or exemption application, direct the filing of the originals (microfilm) of required maps and drawings;

(2)(i) For an application for a preliminary permit or a license, issue public notice of the application as required in the Federal Power Act;

(ii) For an application for exemption from licensing, publish notice once in a daily or weekly newspaper of general circulation in each county in which the project is or will be located; and

(3) If the project affects lands of the United States, notify the appropriate Federal office of the application and the specific lands affected, pursuant to section 24 of the Federal Power Act.

(d) In order for an application to conform adequately to the requirements of paragraphs (a) and (b) of this section and of § 4.38, an application must be completed fully. No blanks should be left in the application. No material or information required in the application should be omitted. If an applicant believes that its application conforms adequately without containing certain required material or information, it must explain in detail why the material or information is not being submitted and what steps were taken by the applicant to provide the material or information. If the Commission finds that an application does not adequately conform to the requirements of paragraphs (a) and (b) of this section and of § 4.38, the Commission or its delegate will consider the application either deficient or patently deficient.

(1) *Deficient applications.* (i) An application that in the judgment of the Director of the Office of Hydropower Licensing does not conform to the requirements of paragraphs (a) and (b) of this section and of § 4.38, may be considered deficient. An applicant having a deficient application will be afforded additional time to correct deficiencies, not to exceed 45 days from the date of notification in the case of an application for a preliminary permit or exemption from licensing or 90 days from the date of notification in the case of an application for license. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an original and the number of copies specified in paragraph (b) of this section of the specified materials or information to the Secretary within the time specified in the notification of deficiency.

(ii) Upon submission of a conforming application, action will be taken in accordance with paragraph (c) of this section.

(iii) If the revised application is found not to conform to the requirements of paragraphs (a) and (b) of this section and of § 4.38, or if the revisions are not timely submitted, the revised application will be rejected. Procedures for rejected applications are specified in paragraph (d)(2)(iii).

(2) *Patently deficient applications.* (i) If, within 60 days of its filing date, the Director of the Office of Hydropower Licensing determines that an application patently fails to substantially comply with the requirements of paragraphs (a) and (b) of this section and of § 4.38, or is for a project that is precluded by law, the application will be rejected as patently deficient with the specification of the deficiencies that render the application patently deficient.

(ii) If, after 60 days of its filing date, the Director of the Office of Hydropower Licensing determines that an application patently fails to substantially comply with the requirements of paragraphs (a) and (b) of this section and of § 4.38, or is for a project that is precluded by law:

(A) The application will be rejected by order of the Commission, if the Commission determines it is patently deficient; or

(B) The application will be considered deficient under subparagraph (d)(1), if the Commission determines it is not patently deficient.

(iii) Any application that is rejected may be resubmitted if the deficiencies are corrected and if, in the case of a

competing application, the resubmittal is timely. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining its timeliness under § 4.36 and the disposition of competing applications under § 4.37.

(e) Any application will be considered "accepted for filing" as of the application filing date if the Secretary receives all of the information and documents necessary to conform to the requirements of paragraphs (a) and (b) of this section and of § 4.38 within the time prescribed by the Commission or its delegate under paragraph (d) of this section.

(f) An applicant may be required to submit any additional information or documents that the Commission or its delegate considers relevant for an informed decision on the application. The information or documents must take the form, and must be submitted within the time, that the Commission or its delegate prescribes. An applicant may also be required to provide within a specified time additional copies of the complete application, or any of the additional information or documents that are filed, to the Commission or to any person, agency, or other entity that the Commission or its delegate specifies. If an applicant fails to provide timely additional information, documents, or copies of submitted materials as required, the Commission or its delegate may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

(g) A prospective applicant, prior to submitting its application for filing, may seek advice from the Commission staff regarding the sufficiency of the application. For this purpose, five copies of the draft application should be submitted to the Director of the Division of Project Management. An applicant or prospective applicant may confer with the Commission staff at any time regarding deficiencies or other matters related to its application. All conferences are subject to the requirements of § 385.2201 of this chapter governing ex parte communications. The opinions or advice of the staff will not bind the Commission or any person delegated authority to act on its behalf.

(h) Intervention in any preliminary permit proceeding will not constitute intervention in any subsequent licensing or exemption proceeding.

(i) Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.

7. Section 4.33 is revised to read as follows:

§ 4.33 Limitations on submitting applications.

(a) *Limitations on submission and acceptance of a preliminary permit application.* The Commission will not accept an application for a preliminary permit for project works that:

(1) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which there is an unexpired preliminary permit.

(2) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which an initial development application has been filed unless the preliminary permit application is filed not later than the time allowed under § 4.36(a) for the filing of applications in competition against an initial application for a preliminary permit that would develop, conserve, and utilize, in whole or in part, the same resources.

(b) *Limitations on submission and acceptance of a license application.* The Commission will not accept an application for a license for project works that would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which there is an unexpired preliminary permit, unless the permittee has submitted an application for license.

(c) *Limitations on submission and acceptance of an application for a license that would affect an exempted project.* (1) Except as permitted under § 4.33(c)(2), § 4.94(d), or § 4.106 (c), (e) or (f), the Commission will not accept an application for a license for project works that are already exempted from licensing under this Part.

(2) If a project is exempted from licensing pursuant to § 4.103 or § 4.109 and real property interests in any non-Federal lands would be necessary to develop or operate the project, any person who is both a qualified license applicant and has any of those real property interests in non-Federal lands may submit a license application for that project. If a license application is submitted under this clause, any other qualified license applicant may submit a competing license application in accordance with § 4.36.

(d) *Limitations on submission and acceptance of exemption applications.*— (1) *Unexpired permit or license.* (i) If there is an unexpired permit in effect for a project, the Commission will accept an application for exemption of that project from licensing only if the exemption applicant is the permittee. Upon acceptance for filing of the permittee's application, the permit will be considered to have expired.

(ii) If there is an unexpired license in effect for a project, the Commission will accept an application for exemption of that project from licensing only if the exemption applicant is the licensee.

(2) *Pending license applications.* If an accepted license application for a project was submitted by a permittee before the preliminary permit expired, the Commission will not accept an application for exemption of that project from licensing submitted by a person other than the former permittee.

(3) *Submitted by qualified exemption applicant.* If the first accepted license application for a project was filed by a qualified exemption applicant, the applicant may request that its license application be treated initially as an application for exemption from licensing by so notifying the Commission in writing and, unless only rights to use or occupy Federal lands would be necessary to develop and operate the project, by submitting documentary evidence showing that the applicant holds the real property interests required under § 4.31. Such notice and documentation must be submitted not later than the last date for filing protests or motions to intervene prescribed in the public notice issued for its license application under § 4.32(c)(2).

(e) *Priority of exemption applicant's earlier permit or license application.* Any accepted preliminary permit or license application submitted by a person who later applies for exemption of the project from licensing will retain its validity and priority under this subpart until the preliminary permit or license application is withdrawn or the project is exempted from licensing.

8. Section 4.34 is revised to read as follows:

§ 4.34 Hearings on applications.

The Commission may order a hearing on an application for a preliminary permit, a license, or an exemption from licensing upon either its own motion or the motion of any interested party of record. Any hearings will be limited to the issues prescribed by order of the Commission.

9. Section 4.35 is revised to read as follows:

§ 4.35 Amendment of application; change of date of acceptance.

(a) *General rule.* (1) Except as provided in paragraph (a)(2), if an applicant amends its filed license or

preliminary permit application in order to change the status or identity of the applicant or to materially amend the proposed plans of development, or if an applicant amends its filed application for exemption from licensing in order to materially amend the proposed plans of development, the Commission, in determining the date of acceptance of the application under § 4.32(e), will consider the date on which the amendment to the application was filed to be the date on which the application was filed with the Commission. The Commission will also consider the amended application as a new filing for the purposes of determining its timeliness under § 4.36, for disposing of competing applications under § 4.37, and for reissuing public notice of the application under § 4.32(c)(2). The Commission also will rescind any acceptance letter already issued for the application.

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

(i) Any corrections of deficiencies made pursuant to § 4.32(d)(1);

(ii) Any amendments made pursuant to § 4.37(b)(4) by a state or a municipality to amend its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a state or a municipality;

(iii) Any amendments made pursuant to § 4.37(c)(2) by a priority applicant to amend its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a priority applicant; and

(iv) Any amendments made by a license or an exemption applicant to amend its proposed plans of development to satisfy requests of fish and wildlife agencies submitted after an applicant has consulted adequately under § 4.38.

(b) *Definitions.* (1) For the purposes of this section, a material amendment to plans of development proposed in an application for a license or exemption from licensing means any fundamental and significant change, including but not limited to:

(i) A change in the installed capacity, or the number or location of any generating units of the proposed project if the change would significantly modify the flow regime associated with the project;

(ii) A material change in the location, size, or composition of the dam, the location of the powerhouse, or the size and elevation of the reservoir if the change would:

(A) Enlarge, reduce, or relocate the area of the body of water that would lie between the farthest reach of the proposed impoundment and the point of discharge from the powerhouse; or

(B) Cause adverse environmental impacts not previously discussed in the original application; or

(iii) A change in the number of discrete units or development to be included within the project boundary.

(2) For purposes of this section, a material amendment to plans of development proposed in an application for a preliminary permit means a material change in the location of the powerhouse or the size and elevation of the reservoir if the change would enlarge, reduce, or relocate the area of the body of water that would lie between the farthest reach of the proposed impoundment and the point of discharge from the powerhouse.

(3) For purposes of this section, a change in the status of an applicant means:

(i) The acquisition or loss of preference as a state or a municipality under section 7(a) of the Federal Power Act; or

(ii) The loss of priority as a permittee under section 5 of the Federal Power Act.

(4) For purposes of this section, a change in the identity of an applicant means a change that either singly, or together with previous amendments, causes a total substitution of all the original applicants in a permit or a license application.

10. A new § 4.36 is added to read as follows:

§ 4.36 Competing applications: deadlines for filing; notices of intent; comparisons of plans of development.

The public notice of an initial preliminary permit application or an initial development application shall prescribe the deadline for filing protests and motions to intervene in that proceeding (the "prescribed intervention deadline").

(a) *Deadlines for filing applications in competition with an initial preliminary permit application.* (1) Any preliminary permit application or any development application not filed pursuant to a notice of intent must be submitted for filing in competition with an initial preliminary permit application not later than the prescribed intervention deadline.

(2) Any preliminary permit application filed pursuant to a notice of intent must be submitted for filing in competition with an initial preliminary permit application not later than 30 days after the prescribed intervention deadline.

(3) Any development application filed pursuant to a notice of intent must be submitted for filing in competition with an initial preliminary permit application not later than 120 days after the prescribed intervention deadline.

(b) *Deadlines for filing applications in competition with an initial development application.* (1) Any development application not filed pursuant to a notice of intent must be submitted for filing in competition with an initial development application not later than the prescribed intervention deadline.

(2) Any development application filed pursuant to a notice of intent must be submitted for filing in competition with an initial development application not later than 120 days after the prescribed intervention deadline.

(3) If the Commission has accepted an application for exemption of a project from licensing and the application has not yet been granted or denied, the applicant for exemption may submit a license application for the project if it is a qualified license applicant. The pending application for exemption from licensing will be considered withdrawn as of the date the Commission accepts the license application for filing. If a license application is accepted for filing under this provision, any qualified license applicant may submit a competing license application not later than the prescribed intervention deadline set for the license application.

(4) Any preliminary permit application must be submitted for filing in competition with an initial development application not later than the deadlines prescribed in subparagraphs (a)(1) and (a)(2) for the submission of preliminary permit applications filed in competition with an initial preliminary permit application.

(d) *Notices of intent.* (1) Any notice of intent to file an application in competition with an initial preliminary permit or an initial development application must be submitted for filing not later than the prescribed intervention deadline for the initial application.

(2) A notice of intent must include:

(i) The exact name, business address, and telephone number of the prospective applicant; and

(ii) An unequivocal statement of intent to submit a preliminary permit application or a development application (specify which type of application).

(e) *Requirements for competing applications.* (1) Any competing application must:

(i) Conform to all requirements for filing an initial application; and

(ii) Include proof of service of a copy of the competing application on the person(s) designated in the public notice

of the initial application for service of pleadings, documents, or communications concerning the initial application.

(2) *Comparisons of plans of development.* (i) After the deadline for filing applications in competition against an initial development application has expired, the Commission will notify each license and exemption applicant of the identity of the other applicants.

(ii) Not later than 14 days after the Commission serves the notification described in paragraph (c)(2)(i), if a license or exemption applicant has not already done so, it must serve a copy of its application on each of the other license and exemption applicants.

(iii) Not later than 60 days after the Commission serves the notification described in paragraph (c)(2)(i), each license and exemption applicant must file with the Commission a detailed and complete statement of how its plans are as well or better adapted than are the plans of each of the other license and exemption applicants to develop, conserve, and utilize in the public interest the water resources of the region. These statements should be supported by any technical analyses that the applicant deems appropriate to support its proposed plans of development.

11. A new § 4.37 is added to read as follows:

§ 4.37 Rules of preference among competing applications.

Except as provided in § 4.33(f), the Commission will select among competing applications on the following bases:

(a) If an accepted application for a preliminary permit and an accepted application for a license propose project works that would develop, conserve, and utilize, in whole or in part, the same water resources, and the applicant for a license has demonstrated its ability to carry out its plans, the Commission will favor the license applicant unless the permit applicant substantiates in its filed application that its plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region.

(b) If two or more applications for preliminary permits or two or more applications for licenses (not including applications for a new license under section 15 of the Federal Power Act) are filed by applicants for project works that would develop, conserve, and utilize, in whole or in part, the same water resources, and if none of the applicants is a preliminary permittee whose application for license was accepted for filing within the permit period, the Commission will select between or among the applicants on the following bases:

(1) If both of two applicants are either a municipality or a state, the Commission will favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans.

(2) If both of two applicants are either a municipality or a state, or neither of them is a municipality or a state, and the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will favor the applicant with the earliest application acceptance date.

(3) If one of two applicants is a municipality or a state, and the other is not, and the plans of the municipality or a state are at least as well adapted to develop, conserve, and utilize in the public interest the water resources of the region, the Commission will favor the municipality or state.

(4) If one of two applicant is a municipality or a state, and the other is not, and the plans of the applicant who is not a municipality or a state are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, the Commission will inform the municipality or state of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the municipality or state to render its plans at least as well adapted as the other plans. If the plans of the municipality or state are rendered at least as well adapted within the time allowed, the Commission will favor the municipality or state. If the plans are not rendered at least as well adapted within the time allowed, the Commission will favor the other applicant.

(c) If two or more applications for licenses are filed for project works which would develop, conserve, and utilize, in whole or in part, the same water resources, and one of the applicants was a preliminary permittee whose application was accepted for filing within the permit period ("priority applicant"), the Commission will select between or among the applicants on the following bases:

(1) If the plans of the priority applicant are at least as well adapted as the plans of each other applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will favor the priority applicant.

(2) If the plans of an applicant who is not a priority applicant are better adapted than the plans of the priority applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will inform the priority applicant of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the priority applicant to render its plans at least as well adapted as the other plans. If the plans of the priority applicant are rendered at least as well adapted within the time allowed, then the Commission will favor the priority applicant. If the plans of the priority applicant are not rendered as well adapted within the time allowed, the criteria specified in paragraph (b) will govern.

(3) The criteria specified in paragraph (b) will govern selection among applicants other than the priority applicant.

(d) With respect to a project for which an application for an exemption from licensing has been accepted for filing, the Commission will select among competing applications on the following bases:

(1) If an accepted application for a preliminary permit and an accepted application for exemption from licensing propose to develop mutually exclusive small hydroelectric power projects, the Commission will favor the applicant whose substantiated plans in the application received by the Commission are better adapted to develop, conserve, and utilize in the public interest the water resources of the region. If the substantiated plans are equally well adapted, the Commission will favor the application for exemption from licensing.

(2) If an application for a license and an application for exemption from licensing, or two or more applications for exemption from licensing are each accepted for filing and each proposes to develop a mutually exclusive project, the Commission will favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region. If the plans are equally well adapted, the Commission will favor the applicant with the earliest application acceptance date.

(e) A municipal applicant must provide evidence that the municipality is competent under applicable state and

local laws to engage in the business of developing, transmitting, utilizing, or distributing power, or such applicant will be considered a non-municipal applicant for the purpose of determining the disposition of competing applications.

12. A new § 4.38 is added to read as follows:

§ 4.38 Pre-filing consultation requirements.

(a) An applicant for a license or exemption from licensing must consult with each appropriate Federal and state agency before submitting its application to the Commission. The Federal agencies to be consulted must include the Federal agency administering any United States lands utilized or occupied by the project as well as other appropriate resource agencies. To assist applicants, the Director of the Office of Hydropower Licensing or the Regional Engineer responsible for the area will provide a list of known appropriate Federal and state agencies upon request.

(b) Consultation consists of the following:

(1) *Initial stage of consultation.* A potential applicant must contact all appropriate agencies and provide each of them with the following information:

(i) Detailed maps with proper land descriptions of the entire project area by township, range and section as well as by state, county, river, river mile, and the closest town. Show the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project with a description of any proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected and the significant resources present, and the applicant's environmental protection, mitigation, and enhancement plans to the extent known at that time; and

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, montly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the proposed point of diversion or impoundment with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations.

(2) *Second stage of consultation.* A potential applicant must perform any reasonable studies that are necessary for the Commission to make an informed decision regarding the merits of the application.

(i) Studies must be conducted prior to filing an application if the results:

(A) Would influence the economic feasibility of the project (e.g., minimum flow study);

(B) Would influence the technical feasibility of the project (e.g., study of potential mass soil movement);

(C) Are needed to determine the design or location of project features;

(D) Are needed to determine the impacts of the project on important natural or cultural resources (e.g., resource surveys);

(E) Are necessary to determine suitable mitigation (e.g., resource surveys); and

(F) Are necessary to minimize impacts to a significant resource (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes).

(ii) Studies may be conducted after a license or exemption is issued if the studies:

(A) Can be conducted only after the project is operating (e.g., turbine-related fish mortality studies);

(B) Would determine the success of mitigative measures (e.g., post-construction monitoring studies); and

(C) Would be used to refine project operation or modify project facilities.

(iii) A potential applicant must provide each agency with a copy of its draft application, the results of all studies and a written request for review and comment. The draft application must clearly indicate the type of application the applicant expects to file with the Commission.

(iv) From the date that an agency receives the applicant's draft application, an applicant must allow each agency the following lengths of time to comment on the draft application before filing the application with the Commission:

(A) Thirty days for an application to be filed under §§ 4.60 and 4.61(d)(2), 4.70 and 4.71, 4.90 through 4.94, 4.101 through 4.107, or 4.200 and 4.201(b)(2), (3) and (4); and

(B) Sixty days for an application to be filed under §§ 4.40 and 4.41, 4.50 and 4.51, 4.60 and 4.61(d)(1), or 4.200 and 4.201(b)(1) and (5). A potential applicant must also provide each agency with a copy of reports discussing the results of any studies performed after the initial stage of consultation and, to the extent possible, must respond in the draft application to any comments and recommendations made by agencies during the initial stage of consultation.

(3) *Third stage of consultation.* When an applicant files an application with the Commission for an exemption, minor license, or major license less than 5 MW, it must serve a copy of its application on each of the agencies consulted. An applicant for a major license for 5 MW or more must provide applications to the agencies after receiving notification by the Commission that the application has been accepted. When an applicant revises, supplements, or amends an application on file with the Commission, or corrects deficiencies in its application pursuant to § 4.32(d)(1), the applicant must serve a copy of the revision, supplement, or amendment upon each consulted agency upon which it had served a copy of the original application.

(c) An applicant must document to the Commission in Exhibit E of its application that the requirements of all three stages of the consultation process have been fully satisfied and must include any agency letters containing comments, recommendations, and terms and conditions.

(d) If an agency fails to comment in writing within the prescribed time period or fails to otherwise consult, an applicant made describe *in detail* in Exhibit E of its application all attempts to consult with that agency, the results of any partial consultations that did occur, and any recommendations that the agency did make.

(e) If all the appropriate agencies waive compliance with any requirement of this section, the applicant may omit compliance with that requirement. The application must describe in Exhibit E of its application the circumstances of the waivers.

(f) An applicant must identify and explain in the application how and why the project would, or would not, comply with the relevant comprehensive state and regional water resource development plans and programs (e.g., the Columbia Basin Fish and Wildlife Program and the Northwest Power Planning Council Regional Energy Plan). If the project would not comply, the applicant must explain why the project should be allowed to not comply with these plans and programs.

§ 4.40 [Amended]

13. Section 4.40 is amended as follows:

a. The title is revised to read:

§ 4.40 Applicability.

b. Paragraphs (b) and (d) are removed.

c. Paragraph (c) is redesignated as paragraph (b).

d. Newly redesignated paragraph (b) is amended by removing the word

"§ 4.31(g)" and inserting, in its place, the word "§ 4.32(g)".

14. Section 4.41 is amended as follows:

a. Paragraph (a)(4), the introductory text in paragraph (f) and paragraph (h)(2) are revised to read as follows:

§ 4.41 Contents of application.

(a) * * *

(4) The applicant is a (citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or State, as appropriate) and (is/is not) claiming preference under section 7(a) of the Federal Power Act. *See* 16 U.S.C. 796.

* * * * *

(f) *Exhibit E* is an Environmental Report. Information provided in the report must be organized and referenced according to the itemized subparagraphs below. *See* § 4.38 for consultation requirements. The Environmental Report must contain the following information, *commensurate with the scope of the project*:

* * * * *

(h) * * *

(2) *Project boundary.* The map must show a project boundary enclosing all project works and other features described under paragraph (b) of this section (Exhibit A) that are to be licensed. If accurate survey information is not available at the time the license application is filed, the applicant must so state, and a tentative boundary may be submitted. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources (*see* paragraph (f) of this section (Exhibit E)). Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes (e.g., for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

(i) *Impoundments.* (A) The boundary around a project impoundment must be described by one of the following:

(*1*) Contour lines, including the contour elevation (preferred method);

(*2*) Specified courses and distances (metes and bounds);

(*3*) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or

(*4*) Any combination of the above methods.

(B) The boundary must be located no more than 200 feet (horizontal measurement) from the exterior margin of the reservoir, defined by the normal maximum surface elevation, except where deviations may be necessary in describing the boundary according to the above methods or where additional lands are necessary for project purposes, such as public recreation, shoreline control, or protection of environmental resources.

(ii) *Continuous features.* The boundary around linear ("continuous") project features such as access roads, transmission lines, and conduits may be described by specified distances from center lines or offset lines of survey. The width of such corridors must not exceed 200 feet unless good cause is shown for a greater width. Several sections of a continuous feature may be shown on a single sheet with information showing the sequence of contiguous sections.

(iii) *Noncontinuous features.* (A) The boundary around noncontinuous project works such as dams, spillways, and powerhouses must be described by one of the following:

(*1*) Contour lines;

(*2*) Specified courses and distances;

(*3*) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or

(*4*) Any combination of the above methods.

(B) The boundary must enclose only those lands that are necessary for safe and efficient operation and maintenance of the project or for other specified project purposes, such as public recreation or protection of environmental resources.

* * * * *

b. Paragraph (f)(4)(vii) is amended by removing the word "§ 4.31(b)" and inserting, in its place, the word "§ 4.32(b)(1)".

c. Paragraph (f)(8)(iv) is amended by removing the word "§ 4.32" and inserting, in its place, the word "§ 4.39".

d. Paragraph (g) is amended by removing the word "§ 4.32" and inserting, in its place, the word "§ 4.39".

e. Paragraph (h) is amended by removing the word "§ 4.32" and inserting, in its place, the word "§ 4.39".

§ 4.50 [Amended]

15. Section 4.50 is amended as follows:

a. The title is revised to read: **§ 4.50 Applicability.**

b. Paragraph (b) is removed.

c. Paragraph (c) is redesignated as paragraph (b).

d. Newly redesignated paragraph (b) is amended by removing the word "§ 4.31(g)" and inserting, in its place, the word "§ 4.32(g)".

§ 4.51 [Amended]

16. Section 4.51 is amended as follows:

a. Paragraphs (f)(4) and (f)(5) are amended by removing the words "U.S. Heritage Conservation and Recreation Service" and inserting, in their place, the words "National Park Service".

b. Paragraph (a)(4) and the respective introductory text in paragraph (f) and paragraph (h)(2) are revised to read as follows:

§ 4.51 Contents of application.

(a) * * *

(4) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate] and (is/is not) claiming preference under section 7(a) of the Federal Power Act. *See* 16 U.S.C. 796.

* * * * *

(f) *Exhibit E* is an Environmental Report. Information provided in the report must be organized and referenced according to the itemized subparagraphs below. *See* § 4.38 for consultation requirements. The Environmental Report must contain the following information, *commensurate with the scope of the proposed project:*

* * * * *

(h) * * *

(2) *Project boundary.* The map must show a project boundary enclosing all of the principal project works and other features described under paragraph (b) of this section (Exhibit A) that are to be licensed. If accurate survey information is not available at the time the license application is filed, the applicant must so state, and a tentative boundary may be submitted. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources (*see* paragraph (f) of this section (Exhibit E)). Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes (e.g., for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public land survey, ties must be shown

on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

* * * * *

b. Subparagraphs (f)(3)(v)(A), (3)(v)(E), (5)(v)(D), (6)(vi), and paragraph (h) are each amended by removing the word "§ 4.32" and inserting, in their respective places, the word "§ 4.39".

c. Subparagraph (g)(3) is amended by removing the word "§ 4.31(b)" and inserting, in its place, the word "§ 4.32(b)(1)".

17. Section 4.60 is revised to read as follows:

§ 4.60 Applicability and notice to agencies.

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license or a new license for:

(1) A minor water power project, as defined in § 4.30(b)(17);

(2) Any major project—existing dam, as defined in § 4.30(b)(16), that has a total installed capacity of 5 MW or less; or

(3) Any major unconstructed project or major modified project, as defined in § 4.30 (b) (15) and (14) respectively, that has a total installed capacity of 5 MW or less.

(b) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for license for a water power project 5 MW or less and request comment on the application. Copies of the application will be available for inspection at the Commission's Division of Public Information. The applicant shall also furnish copies of the filed application to any Federal, state, or local agency that so requests.

§ 4.61 [Amended]

18. Section 4.61 is amended as follows:

a. Paragraphs (a)(1) and (a)(2)(i) are removed.

b. Paragraphs (a)(2)(ii), (a)(2)(ii)(A), (a)(2)(ii)(B), (a)(3), (a)(4), and (a)(5) are redesignated as paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4), respectively.

c. Paragraph (b)(7)(ii) is amended by removing the word "§ 4.40(b)(3)" and inserting, in its place, the word "§ 4.30(b)(14)".

d. Paragraph (b)(10) is removed.

e. Paragraph (d)(1)(i) is amended by removing the word "§ 4.40(b)(2)" and inserting, in its place, the word "§ 4.30(b)(15)".

f. Paragraph (d)(1)(ii) is amended by removing the word "§ 4.40(b)(3)" and inserting, in its place, the word "§ 4.30(b)(14)".

g. Paragraphs (e) and (f) are each amended by removing the word "§ 4.32" and inserting, in their respective places, the word "§ 4.39".

h. Paragraph (b)(5), the introductory text in paragraph (d)(2), and paragraph (f)(4)(iii) are revised to read as follows:

§ 4.61 Contents of applications.

* * * * *

(b) * * *

(5) The applicant is a ——— [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or State, as appropriate] and (is/is not) claiming perference under section 7(a) of the Federal Power Act. *See* 16 U.S.C. 796.

(d) * * *

(2) *For minor projects and major projects at existing dams 5 MW or less.* An application for license for either a minor water power project with a total proposed installed generating capacity of 1.5 MW or less or a major project—existing dam with a proposed total installed capacity of 5 MW or less must contain an Exhibit E under this subparagraph. *See* § 4.38 for consultation requirements. The Environmental Report must contain the following information:

* * * * *

(f) * * *

(4) * * *

(iii) *Federal lands.* Any public lands and reservations of the United States (*see* 16 U.S.C. 796 (1) and (2)) ("Federal lands") that are within the project boundary, e.g., lands administered by the U.S. Forest Service, Bureau of Land Management, National Park Service, or Indian tribal lands, and the boundaries of those Federal lands, must be identified on the map:

(A) By legal subdivisions of a public land survey of the affected area (a protraction of identified township and section lines is sufficient for this purpose);

(B) By the Federal agency, identified by symbol or legend if desired, that maintains or manages each identified subdivision of the public land survey within the project boundary; and

(C) In the absence of a public land survey, by the location of the Federal lands according to the distances and directions from fixed monuments or physical features.

* * * * *

19. In § 4.71, the introductory paragraph and paragraph (a)(5) are revised to read as follows:

§ 4.71 Contents of applications.

An application for license for transmission line only must contain the following information in the form specified.

(a) * * *

(5) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or State, as appropriate] and (is/is not) claiming preference under section 7(a) of the Federal Power Act. *See* 16 U.S.C. 796.

* * * * *

§ 4.80 [Amended]

20. Section 4.80 is amended by revising the title to read:

§ 4.80 Applicability.

21. In § 4.81, paragraph (e) is amended by removing the phrase "§ 4.32 (a) and (b)" and inserting, in its place, the phrase "§ 4.39 (a) and (b)".

22. In § 4.81, paragraph (a)(4) is revised to read as follows:

§ 4.81 Contents of application.

* * * * *

(a) * * *

(4) [Name of applicant] is a [citizen, association, citizens, domestic corporation, municipality, or State, as appropriate] and (is/is not) claiming preference under section 7(a) of the Federal Power Act. [If the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or, if such laws or documents are not clear, any other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of development, transmitting, utilizing, or distributing power].

* * * * *

23. Section 4.82 is revised to read as follows:

§ 4.82 Amendments.

(a) Any permittee may file an application for amendment of its permit, including any extension of the term of the permit that would not cause the total term to exceed three years. (Transfer of a permit is prohibited by section 5 of the Federal Power Act.) Each application for amendment of a permit must conform to any relevant requirements of § 4.81 (b), (c), (d), and (e).

(b) If an application for amendment of a preliminary permit requests any material change in the proposed project,

public notice of the application will be issued as required in § 4.32(c)(2)(i).

(c) If an application to extend the term of a permit is submitted not less than 30 days prior to the termination of the permit, the permit term will be automatically extended (not to exceed a total term for the permit of three years) until the Commission acts on the application for an extension. The Commission will not accept extension requests that are filed less than 30 days prior to the termination of the permit.

24. Section 4.83 is revised to read as follows:

§ 4.83 Cancellation and loss of priority.

(a) The Commission may cancel a preliminary permit after notice and opportunity for hearing if the permittee fails to comply with the specific terms and conditions of the permit. The Commission may also cancel a permit for other good cause shown after notice and opportunity for hearing. Cancellation of a permit will result in loss of the permittee's priority of application for a license for the proposed project.

(b) Failure of a permittee to file an acceptable application for a license before the permit expires will result in loss of the permittee's priority of application for a license for the proposed project.

25. A new § 4.84 is added to read as follows:

§ 4.84 Surrender of permit.

A permittee must submit a petition to the Commission before the permittee may voluntarily surrender its permit. Unless the Commission issues an order to the contrary, the permit will remain in effect through the thirtieth day after the Commission issues a public notice of receipt of the petition.

§ 4.90 [Amended]

26. Section 4.90 is amended by removing the word "§ 4.91" and inserting, in its place, the word "§ 4.30(b)(26)".

§ 4.91 [Removed]

27. Section 4.91 is removed.

§ 4.92 [Amended]

28. Section 4.92 is amended as follows:

a. Paragraphs (a) and (b) are removed.

b. The following paragraphs are redesignated or removed as shown:

Old	New
Designation "(1)" following "(c) *Contents of Application.*".	Removed.
(c)(1)(i)	(a)(1).
(c)(1)(ii)	(a)(2).
(c)(2)	(b).
The introductory text of (c)(3).	The introductory text of (c).
(c)(3)(i) through the introductory text of (c)(3)(vii).	(c)(1) through the introductory text of (c)(7).
(c)(3)(vii)(A) through (c)(3)(vii)(E).	(c)(7)(i) through (c)(7)(v).
(c)(3)(viii) through (c)(3)(xi)	(c)(8) through (c)(11).
The introductory text of (c)(4).	The introductory text of (d).
(c)(4)(i) through (c)(4)(iii)	(d)(1) through (d)(3).
The introductory text of (c)(5).	The introductory text of (e).
(c)(5)(i) through (c)(5)(iii)	(e)(1) through (e)(3).
(c)(5)(iv)	Removed.
(c)(5)(v)	(e)(4).
(c)(6)	(f).

29. In § 4.92, the reference in newly redesignated paragraph (c)(7)(v) to "clause (D)" is revised to read "paragraph (c)(7)(iv) of this section."

30. Section 4.92 is further amended by revising the section heading and newly redesignated paragraphs (a), (b), (c)(7)(iv), (c)(9), (d)(2), the introductory text of (e), and paragraph (f) to read as follows:

§ 4.92 Contents of exemption application.

(a) An application for exemption for this subpart must include:

(1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of § 4.30(b)(26), the facility qualifies but for the discharge requirement of § 4.30(b)(26)(v), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of § 4.30(b)(26)(v), filed pursuant to § 385.207 of this chapter);

(2) Exhibits A, B, E, and G; and

(3) An appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b).

(b) *Introductory Statement.* The introductory statement must be set forth in the following format:

Before the Federal Energy Regulatory Commission, Application for Exemption for Small Conduit Hydroelectric Facility

[Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for the [name of facility], a small conduit hydroelectric facility that meets the requirements of [insert the following language, as appropriate: "§ 4.30(b)(26) of this subpart" or "§ 4.30(b)(26) of this subpart, except paragraph (b)(26)(v)"], from certain provisions of Part I of the Federal Power Act.

The location of the facility is:

State or Territory: _____

County: _____

Township or nearby town: _____

The exact name and business address of each applicant is:

The exact name and business address of each person authorized to act as agent for the applicant in this application is:

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation, as appropriate), as appropriate].

The provisions of Part I of the Federal Power Act for which exemption is requested are:

[List here all sections or subsections for which exemption is requested.]

[If the facility does not meet the requirement of § 4.30(b)(26)(v), add the following sentence: "This application is accompanied by a petition for waiver of § 4.30(b)(26)(v), submitted pursuant to 18 CFR 385.207."]

(c) * * *

(7) * * *

(iv) The average flow of the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and

* * * * *

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(26)(v) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.

* * * * *

(d) * * *

(2) A proposed project boundary enclosing all project works to be exempted from licensing; and

(3) * * *

* * * * * *

(e) *Exhibit E.* This exhibit is an Environmental Report. It must be prepared pursuant to § 4.38 and must include the following information, commensurate with the scope and environmental impact of the facility's construction and operation:

* * * * *

(f) *Exhibit G.* Exhibit G is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility. The drawings must include plan, elevation, profile, section views of the power plant, and any other principal facility structure and of any dam to which a facility structure is attached. Each drawing must be an

ink drawing or a drawing of similar quality on a sheet no smaller than eight and one-half inches by eleven inches, with a scale no smaller than one inch equals 50 feet for plans and profiles and one inch equals 10 feet for sections. Generating and auxiliary equipment must be clearly and simply depicted and described. For purposes of this subpart, these drawing specifications replace those required in § 4.39 of the Commission's regulations.

§ 4.93 [Amended]

31. Section 4.93 is amended as follows:

a. Paragraphs (b), (d) and (e) are removed.

b. Paragraphs (c), (f) and (g) are redesignated as paragraphs (b), (c) and (d) respectively.

c. Newly designated paragraph (b) is amended by removing the word "§ 4.92(c)(5)" and inserting, in its place, the word "§ 4.92(e)".

32. Section 4.93 is amended by revising paragraph (a) to read as follows:

§ 4.93 Action on exemption applications.

(a) An application for exemption that does not meet the eligibility requirements of § 4.30(b)(26)(v) may be accepted, provided the application has been accompanied by a request for waiver under § 4.92(a)(1) and the waiver request has not been denied. Acceptance of an application that has been accompanied by a request for waiver under § 4.92(a)(1) does not constitute a ruling on the waiver request, unless expressly stated in the acceptance.

* * * * *

33. Section 4.94 is amended by revising paragraph (b) and adding new paragraphs (c), (d), (e) and (f) to read as follows:

§ 4.94 Standard terms and conditions of exemption.

* * * * *

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the effective date of this exemption. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) *Article 4.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(e) *Article 5.* The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(f) *Article 6.* Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

34. A new § 4.95 is added to read as follows:

§ 4.95 Surrender of exemption.

(a) To voluntarily surrender its exemption, a holder of an exemption for a small conduit hydroelectric facility must file a petition with the Commission.

(b)(1) If construction has begun, prior to filing a petition with the Commission, the exemption holder must consult with the fish and wildlife agencies in accordance with § 4.38, substituting for the information required under § 4.38(b)(1) information appropriate to the disposition and restoration of the project works and lands. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands.

(2) If construction has begun, public notice of the petition will be given, and, at least 30 days thereafter, the Commission will act upon the petition.

(c) If no construction has begun, unless the Commission issues an order to the contrary, the exemption will remain in effect through the thirtieth day after the Commission issues a public notice of receipt of the petition. New applications involving the site of the surrendered exemption may be filed on the next business day.

(d) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if construction has begun, upon such conditions with respect to the disposition of such project works and restoration of project lands as may be determined by the Commission and the Federal and state fish and wildlife agencies.

35. A new § 4.96 is added to read as follows:

§ 4.96 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by the agencies, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption, or acquiring a license that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of the exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Hydropower Licensing determines that it is in the public interest to do so.

§ 4.101 [Amended]

36. Section 4.101 is amended by removing the word "§ 4.102" and inserting, in its place, the word "§ 4.30(b)(27)".

37. Section 4.102 is revised to read as follows:

§ 4.102 Surrender of exemption.

(a) To voluntarily surrender its exemption, a holder of an exemption for a small hydroelectric power project must file a petition with the Commission.

(b)(1) If construction has begun, prior to filing a petition with the Commission, the exemption holder must consult with the fish and wildlife agencies in accordance with § 4.38, substituting for the information required under §4.38(b)(1) information appropriate to the disposition and restoration of the project works and lands. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands.

(2) If construction has begun, public notice of the petition will be given, and, at least 30 days thereafter, the Commission will act upon the petition. New applications involving the site may be filed on the next business day.

(c) If no construction had begun, unless the Commission issues an order to the contrary, the surrender will take effect at the close of the thirtieth day after the Commission issues a public notice of receipt of the petition. New applications involving the site may be filed on the next business day.

(d) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if construction has begun, upon such conditions with respect to the disposition of such project works and restoration of project lands as may be determined by the Commission and the Federal and state fish and wildlife agencies.

(e) Where occupancy of United States lands or reservations has been permitted by a Federal agency having supervision over such lands, the exemption holder must concurrently notify that agency of the petition to surrender and of the steps that will be taken to restore the affected U.S. lands or reservations.

38. Section 4.103 is revised to read as follows:

§ 4.103 General provisions for case-specific exemption.

(a) *Exemptible projects.* Subject to the provisions in paragraph (b) of this section, § 4.31(c), and §§ 4.105 and 4.106, the Commission may exempt on a case-specific basis any small hydroelectric power project from all or part of Part I of the Act, including licensing requirements. Any applications for exemption for a project shall conform to the requirements of §§ 4.107 or 4.108, as applicable.

(b) *Limitation for licensed water power project.* The Commission will not accept for filing an application for exemption from licensing for any project that is only part of a licensed water power project.

(c)(1) *Waiver.* In applying for case-specific exemption from licensing, a qualified exemption applicant may petition under § 385.207 of this chapter for waiver of any specific provision of §§ 4.102 through 4.107. The Commission will grant a waiver only if consistent with Section 408 of the Energy Security Act of 1980.

(2) For any small hydroelectric power project that would utilize a natural water feature, as defined in § 4.30(b)(27)(ii)(A), a qualified exemption applicant may obtain a waiver under this paragraph of the height limitation in § 4.30(b)(27)(ii)(C)(1), the water retention limitation in § 4.30(b)(27)(ii)(C)(2), or both only if that applicant has demonstrated, based on adequate environmental and engineering information in its exemption application and petition for waiver, that it is reasonable to waive these limitations. In no case may a diversion or intake structure for such project exceed ten feet in total height.

39. Section 4.104 is revised to read as follows:

§ 4.104 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by that agency, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption or acquiring a license for the project works that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of an exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Hydropower Licensing determines that it is in the public interest to do so.

§ 4.105 [Amended]

40. Section 4.105 is amended as follows:

a. The heading "*Exemption from licensing. (1) General Procedure.*" following the paragraph designation "(b)" is removed.

b. Paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) are removed.

c. Paragraphs (b)(3) and (b)(6) are redesignated as (b)(1) and (b)(2), respectively.

41. Section 4.106 is amended by revising paragraphs (b) and (c) and adding new paragraphs (f), (g), (h), and (i) to read as follows:

§ 4.106 Standard terms and conditions of case-specific exemption from licensing.

* * * * *

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

* * * * *

(f) *Article 6.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in

structure or operation or may revoke this exemption.

(g) *Article 7.* The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(h) *Article 8.* Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 CFR 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 CFR Part 222, is subject to the following provisions of 18 CFR Part 12, as it may be amended:

(1) Section 12.4(b)(1) (i) and (ii), (b)(2) (i) and (iii), (b)(iv), and (b)(v);

(2) Section 12.4(c);

(3) Section 12.5;

(4) Subpart C; and

(5) Subpart D.

For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

(i) Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

42. Section 4.107 is amended as follows:

a. In paragraph (a), the designation "(1)" following the heading "*General requirements.*" is removed;

b. Paragraph (a)(2) is removed;

c. Paragraph (e)(3) is removed;

d. Paragraph (e)(4) is redesignated (e)(3); and

e. Paragraph (c)(5) and the introductory text of (e) of § 4.107 are revised and a new paragraph (d)(4) is added to read as follows:

§ 4.107 Contents of application for exemption from licensing.

* * * * *

(c) * * *

(5) A graph showing a flow duration curve for the project. Identify stream gauge(s) and period of record used. If a synthetic record is utilized, provide details concerning its derivation. Furnish justification for selection of installed capacity if the hydraulic capacity of proposed generating unit(s) plus the minimum flow requirements, if not usable for power production, is less than the stream flow that is exceeded 25 percent of the time.

* * * * *

(d) * * *

(4) A proposed project boundary enclosing project works to be exempted from licensing.

* * * * *

(e) *Exhibit E.* This exhibit is an environmental report that must include the following information, commensurate with the scope and environmental impact of the construction and operation of the small hydroelectric power project. *See* § 4.38 for consultation requirements.

(1) * * *

* * * * *

43. The introductory text of § 4.201 and the heading and introductory text of § 4.201(b) are revised respectively to read as follows:

§ 4.201 Contents of application.

An application for amendment of a license for a water power project must contain the following information in the form specified.

* * * * *

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a water power project that would alter the actual or proposed total installed capacity of the project must be prepared pursuant to § 4.38 and must contain the following exhibits, or revisions or additions to any exhibits on file, *commensurate with the scope of the licensed project:*

(1) * * *

* * * * *

Appendix A

DERIVATION TABLE

New section	Current section
§ 4.30:	
(a)	N/A.
(b)(1)	§ 4.33(a) amended.
(b)(2)	§ 4.91(a).
(b)(3)	§ 4.91(b).
(b)(4)(i)	§ 4.50(b)(1).
(b)(4)(ii)	§ 4.91(c).
(b)(4)(iii)	§ 4.102(a).
(b)(5)	N/A.
(b)(6)(i)	§ 4.50(b)(2).
(b)(6)(ii)	§ 4.102(b).
(b)(7)	§ 4.50(b)(3).
(b)(8)	§ 4.102(d).
(b)(9)	§§ 4.91(d) and 4.102(c).
(b)(10)	§ 4.33(a).
(b)(11)	§ 4.40(b)(1). §§ 4.50(b)(4) and 4.60(b)(1).
(b)(12)	§ 4.102(m).
(b)(13)	§ 4.102(g).
(b)(14)	§ 4.40(b)(3).
(b)(15)	§ 4.40(b)(2).
(b)(16)	§ 4.50(b)(5).
(b)(17)	§ 4.60(b)(3).
(b)(18)	§ 4.50(b)(6).
(b)(19)	§§ 4.40(b)(4), 4.50(b)(7) and 4.60(b)(2).
(b)(20)(i)	§ 4.91(e).
(b)(20)(ii)	§ 4.102(e).
(b)(21)	§ 4.102(i).
(b)(22)	§ 4.102(h).
(b)(23)	§ 4.102(j).
(b)(24)	§ 4.102(k).
(b)(25)	§ 4.102(f).
(b)(26)	§ 4.91(f).
(b)(27)	§ 4.102(1).
§ 4.31:	
(a)	§ 4.33(a).
(b))	§ 4.92(a).
(c)	§ 4.103(b).
§ 4.32:	
(a)(1)	§ 4.30(d).
(a)(2)	N/A.
(a)(3)	N/A.
(a)(4)	§ 4.31(a)(2).
(b)(1)	§ 4.31(b).
(b)(2)	§§ 4.92(b)(2) and 4.107(a)(2).
(c)(1)	§ 4.31(c)(1).
(c)(2)(i)	§ 4.31(c)(2).
(c)(2)(ii)	§§ 4.93(a)(1) and 4.105(b)(1).
(c)(3)	§ 4.31(c)(3).
(d)(1)	§§ 4.31(d)(1), 4.93(a)(1) and 4.105(b)(1).
(d)(2)	§ 4.31(d)(2).
(e)	§ 4.31(e).
(f)	§ 4.31(f).
(g)	§ 4.31(g).
(h)	§ 4.31(h).
(i)	N/A.
§ 4.33:	
(a)	§ 4.30(b).
(b)	§ 4.30(c).
(c)	§ 4.104(c).
(d)	§ 4.104(a).
(e)	§ 4.104(b).
(f)	N/A.
§ 4.36:	
(a)	§ 4.33(a).
(b)	§§ 4.33(a), and 4.104(c)(2)(iii) and (iv).
(c)	
§ 4.33(d)	
§ 4.37:	
(a)	§ 4.33(f).
(b)	§ 4.33(g).
(c)	§ 4.33(h).
(d)	§ 4.104(e).
(e)	§ 4.33(i).
§ 4.38	N/A.
§ 4.39	§ 4.32.

DISTRIBUTION TABLE

Current section	New section
§ 4.30:	
(a)	§ 4.31(a).
(b)	§ 4.33(a).
(c)	§ 4.33(b).
(d)	§ 4.32(a).
§ 4.31:	
(a)(1)	N/A.
(a)(2)	§ 4.32(a)(4).
(b)	§ 4.32(b).
(c)	§ 4.32(c).
(d)	§ 4.32(d).
(e)	§ 4.32(e).
(f)	§ 4.32(f).
(g)	§ 4.32(g).
(h)	§ 4.32(h).
§ 4.32	§ 4.39.
§ 4.33:	
(a)	§ 4.30(b) (1) and (9).
(a)(1)–(e)	§ 4.36.
(f)	§ 4.37(a).
(g)	§ 4.37(b).
(h)	§ 4.37(c).
(i)	§ 4.37(e).
§ 4.34	§ 4.34.
§ 4.35	§ 4.35.
§ 4.40:	
(a)	§ 4.40(a).
(b)	§ 4.30(b).
(c)	§ 4.40(b).
(d)	§ 4.38.
§ 4.41	§ 4.41.
§ 4.50:	
(a)	§ 4.50(a).
(b)	§ 4.30(b).
(c)	§ 4.50(b).

DISTRIBUTION TABLE—Continued

Current section	New section
§ 4.51	§ 4.51.
§ 4.60:	
(a)	§ 4.60(a).
(b)	§ 4.30(b).
(c)	§ 4.60(b).
§ 4.61:	
(a)(1)	§ 4.38.
(a)(2)(i)	§ 4.32(b).
(b)-(f)	§ 4.61(b)-(f)
§ 4.70	§ 4.70.
§ 4.71	§ 4.71.
§ 4.80	§ 4.80.
§ 4.81	§ 4.81.
§ 4.82	§ 4.82.
§ 4.83	§ 4.83.
§ 4.90	§ 4.90.
§ 4.91	§ 4.30(b).
§ 4.92:	
(a)	§ 4.31(b).
(b)	§ 4.432(b)(2).
(c)(1)-(c)(6)	§ 4.492(a)-(f).
§ 4.93:	
(a)(1)	§ 4.32.
(b)(2)	§ 4.93(a).
(b)	§ 4.34.
(c)	§ 4.93(b).
(d)	§ 4.93(c).
(e)	§ 4.93(d).
(f)	§ 4.93(e).
(g)	§ 4.93(f).
§ 4.94	§ 4.94.
§ 4.101	§ 4.101.
§ 4.102	§ 4.30(b).
§ 4.103:	
(a)	§ 4.103(a).
(b)	§ 4.31(c).
(c)	§ 4.103(b).
(d)	§ 4.103(c).
§ 4.104:	
1st paragraph	Deleted.
(a)	§ 4.33(d).
(b)	§ 4.33(e).
(c)	§ 4.33(c) and 4.36(b).
(d)	§ 4.36(d).
(e)	§ 4.37(d).
§ 4.105:	
(a)	Deleted.
(b)(1)	§ 4.32.
(b)(2)	§ 4.34.
(b)(3)	§ 4.105(b)(1).
(b)(4)	§ 4.105(b)(2).
(b)(5)	§ 4.105(b)(3).
(b)(6)	§ 4.105(b)(4).
§ 4.106	§ 4.106.
§ 4.107:	
(a)(1)	§ 4.107(a).
(a)(2)	§ 4.32.
(b)	§ 4.107(b).

[FR Doc. 85-6842 Filed 3-22-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 85N-0011]

Antibiotic Drugs; Sterile Ceftriaxone Sodium

Correction

In FR Doc. 85-5772 beginning on page 9998 in the issue of Wednesday, March 13, 1985, make the following corrections: on page 10000, in the third column, in § 442 55 a(b)(1)(iv)(*b*), in the fourth, twelfth and fifteenth lines, "ceftriazone" should read "ceftriaxone".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 3-Methylfentanyl into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration (DEA) is issuing this notice to temporarily place 3-methylfentanyl into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding that the scheduling of 3-methylfentanyl in Schedule I is necessary to avoid an imminent hazard to the public safety. This action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacturing, distribution and possession of 3-methylfentanyl.

EFFECTIVE DATE: On April 25, 1985, 3-methylfentanyl will be subject to Schedule I control.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washinton, D.C. 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473) amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. Scheduling a substance under this emergency provision may be done without regard to the requirements of section 201(b) of the CSA (21 U.S.C. 811(b)) relating to the Secretary of Health and Human Services. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100(b)).

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Acting Administrator has notified the Secretary of Health and Human Services of his intention to place this substance in Schedule I pursuant to the emergency scheduling provisions. Such action may not take effect until the expiration of thirty days after notification is transmitted to the Secretary.

In making a finding of an imminent hazard to the public safety, the Attorney General is required to consider only those factors set forth in paragraphs (4) the history and current pattern of abuse, (5) the scope, duration and significance of abuse, and (6) what, if any, risk there is to the public health, of section 201(c) of the CSA (21 U.S.C. 811(c)).

House Report 98-835 which accompanied Pub. L. 98-473 states that "This new procedure [emergency scheduling] is intended by the Committee to apply to what has been called "designer drugs", new chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." The fentanyl analogs, including 3-methylfentanyl, are examples of such designer drugs which Congress clearly intended to subject to the emergency scheduling authority as imminent hazards to the public safety.

Information available to DEA indicates that a series of analogs of the Schedule II narcotic analgesic, fentanyl, have been clandestinely produced, distributed and abused on the West Coast since late 1979. The first of these analogs detected was alpha-methylfentanyl, sold on the street as "China White" or "synthetic heroin." Using the traditional scheduling process pursuant to section 201 (b) and (c) of the CSA (21 U.S.C. 811 (b) and (c)), DEA placed alpha-methylfentanyl into Schedule I of the CSA on September 22, 1981 (46 FR 46799). Since the control of alpha-methylfentanyl, DEA laboratories have identified other fentanyl analogs clandestinely produced and distributed in California. Available information did not indicate that these analogs were causing a serious public safety hazard until 1984. Increased reports of the distribution, abuse and health hazards of the fentanyl analogs coincided with the identification of 3-methylfentanyl by DEA laboratories in submissions from the San Francisco Bay area in late 1983 and 1984.

N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide, or 3-methylfentanyl is an extremely potent morphine-like analgesic substance with a rapid onset and short duration of action. 3-methylfentanyl exhibits a pharmacological profile similar to that of fentanyl, morphine and heroin. In tests which determine morphine-like analgesic effects on rats, some forms of 3-methylfentanyl effectively produced analgesia at doses as low as 0.00058 mg/

kg, compared to 3.15 mg/kg for morphine, thus making 3-methylfentanyl effective at 1/5000th the dose of morphine. The acute toxicity, measured as the LD_{50} in rats, of 3-methylfentanyl (1.08 mg/kg) is over 200 times lower than that for morphine (238 mg/kg). DEA is unaware of any legitimate medical use or manufacturers of 3-methylfentanyl in the United States.

3-methylfentanyl was first identified by a DEA laboratory in drug samples submitted from Fresno, California in December, 1983. During 1984, forensic laboratories identified 3-methylfentanyl in 33 drug samples; 25 of them since August, 1984. An additional 5 samples containing 3-methylfentanyl were analyzed by DEA laboratories in February, 1985. One of these recent samples was part of a 455g (approximately 1 pound) exhibit obtained in Santa Clara County, California. All but one of the 40 samples of 3-methylfentanyl analyzed by forensic laboratories originated in the San Francisco Bay area; the lone exception was an exhibit obtained in Brooklyn, New York in July, 1984 and containing a fentanyl analog, most probably 3-methylfentanyl.

Narcotic treatment program directors in California report an increasing number of fentanyl users seeking treatment in 1984. Although the specific fentanyl analogs were not identified in the urine samples of applicants, it is most likely that 3-methylfentanyl is the responsible analog. All of the reports of fentanyl analog use by individuals seeking treatment since July, 1984 were from the San Francisco Bay area.

At least 31 overdose deaths associated with fentanyl analogs were reported in 1984; 26 of these since August 1, 1984. Twenty of the overdose deaths occurred in the San Francisco Bay area where 3-methylfentanyl has been specifically identified in powder samples. Deaths were caused by pulmonary congestion due to intravenous "fentanyl" toxicity. Concentrations of the fentanyl-like substance in the body fluids of the overdose victims, in many cases, were extremely low (less than 1 ng/ml) which is consistent with the use of an extremely potent substance such as 3-methylfentanyl.

Impurities, precursors and by-products found in the samples of 3-methylfentanyl indicate that it is produced in clandestine laboratories using a procedure not described in the chemical literature. The suspected process results in the formation of unwanted by-products. Clandestinely produced substances pose additional health and safety risks because the purity and concentration of active ingredients is unknown and inconsistent.

The pattern of abuse of fentanyl analogs in general and 3-methylfentanyl in particular parallels that of heroin. Fentanyl analogs, including 3-methylfentanyl, are sold on the street as "China White", "synthetic heroin," "heroin" or "fentanyl." The packaging is identical to that of heroin; it is "cut" with lactose and mannitol and recently mixed with cocaine. 3-methylfentanyl is abused by known heroin addicts and used intravenously after it is dissolved in heated water.

The exact magnitude of the production, distribution and use of 3-methylfentanyl is difficult to determine due to the minute quantities of material present in powder samples (micrograms) and biological samples (submicrograms) and the difficulty in detecting these quantities by laboratory analysis. In light of the above, there is little doubt that the prevalence of 3-methylfentanyl is underreported. The number of 3-methylfentanyl samples analyzed by forensic laboratories, the number of 3-methylfentanyl associated overdose deaths and the number of narcotic treatment program admissions due to fentanyl analog use during the latter half of 1984 is thus highly significant.

The data described above clearly shows that the production, distribution and abuse of 3-methylfentanyl currently pose a very serious hazard to the public safety, at least in California. Although there has been minimal information concerning the use of fentanyl analogs, including 3-methylfentanyl, outside of California (2 overdose deaths in Oregon associated with a fentanyl-like substance and 1 powder sample in Brooklyn, New York which is probably 3-methylfentanyl), there is a very high potential for the spread of 3-methylfentanyl to other areas of the country.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Acting Administrator has considered the following factors described in section 201(c) of the CSA (21 U.S.C. 811(c)) relative to making a determination of whether 3-methylfentanyl poses an imminent hazard to the public safety:

* * * * *

(4) Its history and current pattern of abuse.

(5) The scope, duration and significance of abuse.

(6) What, if any, risk there is to the public health.

* * * * *

Based on a consideration of these factors and other relevant information, the Acting Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that:

(1) 3-methylfentanyl poses an imminent hazard to the public safety,

(2) Scheduling 3-methylfentanyl in Schedule I of the CSA, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

The Acting Administrator has transmitted notice of his intention to temporarily place 3-methylfentanyl into Schedule I to the Secretary of Health and Human Services. Comments submitted by the Secretary in response to the notification, including whether there is an exemption or approval in effect for 3-methylfentanyl under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration by the Acting Administrator before the notice becomes effective.

Pursuant to the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Acting Administrator hereby orders that on April 25, 1985, 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers, be placed into Schedule I of the CSA (21 U.S.C. 801 et seq.) unless the Acting Administrator gives notice in the **Federal Register** that this order is rescinded prior to April 25, 1985.

The temporary placement of 3-methylfentanyl in Schedule I under section 201(h) of the CSA (21 U.S.C. 811(h)) will expire at the end of one year from the effective date of this order. If a rulemaking proceeding to schedule 3-methylfentanyl under the CSA has been initiated pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)) and is pending, the temporary scheduling may be extended for up to six months.

This action is not a formal rulemaking procedure as set forth in the Administrative Procedures Act (5 U.S.C. 551–559) and the opportunity for a hearing on the record is not required. Nevertheless, the Acting Administrator affords the opportunity for comments to be submitted concerning this matter. Comments should be submitted in

quintuplicate to the Acting Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attention: Federal Register Representative.

All regulations and criminal sanctions applicable to Schedule I substances are effective on April 25, 1985, with respect to 3-methylfentanyl. However, individuals registered with DEA in accordance with Part 1301 or 1311 of Title 21 of the Code of Federal Regulations and who currently possess 3-methylfentanyl may continue to do so pending submission of an amended registration no later than May 24, 1985.

1. Registration. Any person who manufactures, distributes, delivers, imports or exports 3-methylfentanyl, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. Security. 3-methylfentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels and labeling for commercial containers of 3-methylfentanyl must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. Quotas. All persons required to obtain quotas for 3-methylfentanyl shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. Inventory. Every registrant required to keep records and who possesses any quantity of 3-methylfentanyl shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations of all stocks of this substance on hand.

6. Records. All registrants required to keep records pursuant to §§ 1304.21–1301.27 of Title 21 of the Code of Federal Regulations shall do so regarding 3-methylfentanyl.

7. Reports. All registrants required to submit reports pursuant to §§ 1304.37–1304.41 of Title 21 of the Code of Federal Regulations shall do so regarding 3-methylfentanyl.

8. Order Forms. All registrants involved in distribution of 3-methylfentanyl shall comply with the order form requirements of §1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. Importation and Exportation. All importation and exportation of 3-methylfentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. Criminal Liability. Any activity with respect to 3-methylfentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring after April 25, 1985, is unlawful.

Pursuant to 5 U.S.C. 605(b), the Acting Administrator certifies that the temporary placement of 3-methylfentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of a substance with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of 3-methylfentanyl in Schedule I of the CSA under the emergency scheduling provisions is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Dated: March 14, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

PART 1308—[AMENDED]

For the reasons set forth in the preamble,

§ 1308.11 [Amended]

21 CFR 1308.11 is amended by adding a new paragraph (g) to read as follows:

* * * * *

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers.....9813.

[FR Doc. 85-6732 Filed 3-22-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

Commerce in Firearms and Ammunition; Format for Firearms Acquisition and Disposition Record

CFR Correction

The Office of the Federal Register is correcting a typesetting error in the Firearms Acquisition and Disposition Record format appearing in 27 CFR Part 178.125.

The correct format was originally published at 33 FR 18555, Dec. 14, 1968, as 26 CFR 178.125, and was incorporated correctly into the subsequent editions of Title 26 CFR from 1969 through 1974. In 1975, the regulations in Title 26, Subchapter E (Parts 170–299) were transferred to and redesignated as Title 27, Subchapter M, (Parts 170–299) by a document published at 40 FR 16835, April 15, 1975. The correct format for 27 CFR 178.125 appeared in all subsequent editions of Title 27 CFR through the edition of April 1, 1980. The typsetting error first occurred in the April 1, 1981 edition of Title 27, CFR Parts 1 to 199, and the error has been repeated in the later editions of the same volume issued as of April 1 in 1982, 1983 and 1984. The BATF brought the error to the attention of the Office of the Federal Register subsequent to release of the 1984 CFR edition.

An official of the BATF has informed the OFR by letter that "some licensees have used the incorrect format of the firearms record in 27 CFR 178.125 as a guide, and have made a supply of these forms for their future use. Licensees may continue to use the forms with the incorrect format until their supplies are exhausted. However, all of the information required by 27 CFR Part 178.125 must still be included on either format used".

The correct format should read as set forth below.

§ 178.125 Record of receipt and disposition.

* * * * *

(e) * * *

FIREARMS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition		
Manufacturer and/or importer	Model	Serial No.	Type of action	Caliber and gauge	Date	From whom (name and address or name and license number)	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. if Forms 4473 filed numerically

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BILLING CODE 1505-02-T

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 107

[DoD Instruction 6025.5]

Personal Services Contracting Authority for Direct Health Care Providers

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Assistant Secretary of Defense (Health Affairs) provides policy guidance for personal services contracting for direct health care providers within military medical treatment facilities (MTF). When in-house sources are insufficient to support the medical mission, facility commanders need an effective mechanism to accomplish their mission. This final rule permits personal service contracts to be utilized to maximize beneficiary access, maintain readiness, reduce the use of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and promote the continuity of the patient/provider relationship.

EFFECTIVE DATE: February 27, 1985.

ADDRESS: The Assistant Secretary of Defense (Health Affairs), Department of Defense, The Pentagon, Washington, D.C. 20301-1200.

FOR FURTHER INFORMATION CONTACT: Col. Herb Rosenbleeth, telephone 202 697-8975.

List of subjects in 32 CFR Part 107

Government contracts, Health care.

Accordingly, 32 CFR, Chapter I, is amended by adding a new Part 107, reading as follows:

PART 107—PERSONAL SERVICES AUTHORITY FOR DIRECT HEALTH CARE PROVIDERS

Sec.

Authority: 10 U.S.C. 1091; Federal Acquisition Regulation (FAR), Part 37.

§ 107.1 Purpose.

This part establishes policy under 10 U.S.C. 1091, "Contracts For Direct Health Care Providers," and assigns responsibility for implementing the authority for personal services contracts for direct health care providers.

§ 107.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

(b) It applies only to personal services contracts awarded under 10 U.S.C. 1091 for direct health care providers.

§ 107.3 Definitions.

(a) *Personal Services Contract.* A contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be government employees.

(b) *Direct Health Care Providers.* Health services personnel who participate in clinical patient care and services. This does not include personnel whose duties are primarily administrative or clerical, nor personnel who provide maintenance or security services.

§ 107.4 Policy.

(a) It is the policy of the Department of Defense that when in-house sources are insufficient to support the medical mission of the Military Departments, personal services contracts under 10 U.S.C. 1091 may be executed.

(b) It is the purpose of personal services contracts to facilitate mission accomplishment, maximize beneficiary access to military MTFs, maintain readiness capability, reduce use of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and enhance quality of care by promoting the continuity of the patient/provider relationship.

(c) Personnal services contractors shall be subject to the same quality assurance, credentialing processes, and other standards as those required of military health care providers. In addition, providers, other than para-professionals, must be licensed in accordance with state or host country requirements to perform the contract services.

(d) In establishing lines of authority and accountability, DoD supervisors may direct the activities of personal services contractors on the same basis as DoD employees. However, the rights, benefits, and compensation of personal services contractors shall be determined solely in accordance with the personal service contract.

(e) Requests for personal services contracts contemplating reimbursement at the maximum rate of basic pay and allowances under 10 U.S.C. 1091 shall be approved at the major command level. The 0-6 grade shall be used sparingly and subsequently will be subject to review.

§ 107.5 Procedures.

(a) Each contract under 10 U.S.C. 1091 with an individual or with an entity, such as a professional corporation or partnership, for the personal services of an individual must contain language specifically acknowledging the individual as a personal services contractor whose performance is subject to supervision and direction by designated officials of the Department of Defense.

(b) The appearance of an employer-employee relationship created by the DoD supervision of a personal services contractor will normally support a limited recognition of the contractor as equal in status to a DoD employee in disposing of personal injury claims arising out of the contractor's performance. Personal injury claims alleging negligence by the contractor within the scope of his or her contract performance, therefore, will be processed as claims alleging negligence by DoD military or civil service personnel.

(c) Compensation for personal services contractors under 10 U.S.C. 1091 shall be within the limits established in the Table of Authorized Compensation Rates. (See enclosure 1.) Prorated compensation based upon hourly, daily, or weekly rates may be awarded when a contractor's services are not required on a full-time basis. In all cases, however, a contractor may be compensated only for periods of time

actually devoted to the delivery of services required by the contract.

(d) Contracts for personal services entered into shall be awarded and administered pursuant to the provisions of the Federal Acquisition Regulation (FAR), Part 37 and DoD and departmental supplementary contracting provisions.

§ 107.6 Responsibilities.

(a) The Military Departments shall be responsible for the management of the direct health care provider contracting program, ensuring that effective means of obtaining adequate quality care is achieved in compliance with the FAR, Part 37. The portion of the Military Department regulations ensuring that compensation provided for a particular type of service is based on objective criteria and is not susceptible to individual favoritism shall be stressed.

(b) The Office of the Assistant Secretary of Defense (Health Affairs) (OASD(HA)) shall be responsible for monitoring the personal services contracting program.

Part 107, Encl. 1

Enclosure 1—Table of Authorized Compensation Rates

Occupation/specialty group	Compensation rate not to exceed	
	Pay grade	Years of service
I. Physicians and dentists	0-6	Over 26.
II. Other individuals, including nurse practitioners, nurse anesthetists, and nurse midwives, but excluding paraprofessionals.	0-5	Over 20 but less than 22.
III. All registered nurses, except those who are included in Group II.	0-4	Over 16 but less than 18.
IV. Paraprofessionals	0-3	Over 6 but less than 8.

Dated: March 20, 1985.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-6952 Filed 3-22-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-84-22]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation, the Coast Guard is changing regulations governing the State Road 544 drawbridge, mile 371 at Socastee by permitting the number of openings to be limited during certain periods. This change is being made because vehicular traffic has increased. This action will accommodate vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on April 24, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, Telephone (305) 350-4103.

SUPPLEMENTARY INFORMATION: Temporary regulations providing for bridge openings on the hour and half-hour were implemented during the months of April, May, June and July 1984. On December 20, 1984, the Coast Guard published proposed rules (49 FR 49482) which would limit bridge openings to the hour, 20 minutes past the hour and forty minutes past the hour during periods that high vehicular traffic coincided with high vessel traffic. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated January 8, 1985. In each notice interested persons were given until February 4, 1985 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

In response to the proposal, 6 letters were received. One letter favored any type of regulation. Four letters favored hour and half-hour openings and one letter favored closed periods from 7:20 am to 8:10 am and 3:00 pm to 3:45 pm or from 5:00 pm to 5:45 pm during the time frames of the proposed regulations. No objections were received to the proposed rule from navigational interests. Based on the comments received on the effects of 20 minute openings and our experience with the temporary regulations for 30 minute openings, April through July 1984, the regulations are being issued specifying openings on the hour and half-hour. This increase of ten minutes between bridge openings is not considered a significant change to the original proposal; therefore, a Supplemental Notice of Proposed Rulemaking was not issued.

Economic Assessment and Certification

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

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows, public vessels of the United States and regularly scheduled cruise vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by redesignating paragraphs (a), (b) and (c) of § 117.911 as paragraphs (b), (c) and (d), without change, and by adding a new paragraph (a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) The draw of the Socastee (SR-544) bridge across the AIWW, mile 371, at Socastee shall open on signal except that from April 1 through June 30 and October 1 through November 30 from 7 a.m. to 10 a.m. and 2 p.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need only be opened on the hour and half-hour if any vessels are waiting to pass. From May 1 through June 30 and October 1 through October 31 from 10 a.m. to 2 p.m., Saturdays, Sundays and federal holidays, the draw need only be opened on the hour and half-hour if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5) 33 CFR 1.05-1(G)(3)))

Dated: March 13, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85-6986 Filed 3-22-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Paducah, KY; Regulation 85-02]

Safety Zone Regulations; Ohio River Mile 960-965

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is continuing a safety zone in effect between Mile 960 and 965, Ohio River.

The zone is needed to protect passing vessel traffic from a safety hazard associated with a towboat sunk in the navigable channel, and also to allow for the safe conduct of salvage operations.

Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 11 March 1985. It terminates on 30 June 1985, or upon completion of salvage operations, whichever comes first.

FOR FURTHER INFORMATION CONTACT: CDR T.H. Robinson (502) 442-1621.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessel involved, passing vessel traffic, or vessels engaged in salvage operations.

Drafting Information

The drafters of this regulation are LTJG B.H. Hollis, project officer for the Captain of the Port, and LT R.E. Kilroy, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation resulted from the sinking of the Motor Vessel CITY OF GREENVILLE at 0230S, 11 February 1985, at Mile 962.6, Ohio River.

List of subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T0203 to read as follows:

§ 165.T0203 Safety Zone: Ohio River.

(a) *Location.* The following area is a safety zone: Above Lock and Dam 53, Mile 960, Ohio River, to below Lock and Dam 53, Mile 965, Ohio River.

(b) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: March 6, 1985.

Thomas H. Robinson,

Commander, U.S. Coast Guard, Captain of the Port, USCG, Paducah, KY.

[FR Doc. 85-6987 Filed 3-22-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-82019; FRL-2803-4]

Chemical Information Rules; Addition of Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7) to the list of substances subject to the Toxic Substances Control Act section 8(a) Preliminary Assessment Information (PAI) rule. The Interagency Testing Committee (ITC) recommended this chemical in its Fourteenth Report but did not designate it for priority consideration within 1 year. The PAI rule requires manufacturers of 3,4-dichlorobenzotrifluoride to complete the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA will use the information submitted to evaluate risks associated with the chemical, as well as to determine whether the chemical should be included in testing rules issued under section 4 of the Toxic Substances Control Act (TSCA).

DATES: This regulation shall be promulgated for purposes of judicial review at 1 p.m. Eastern time on April 8, 1985. This regulation becomes effective on May 8, 1985.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0420.

I. Background

EPA issued the Preliminary Assessment Information Rule under section 8(a) of the Toxic Substances Control Act (TSCA) which was published in the **Federal Register** of June 22, 1982 (47 FR 26992). The rule requires manufacturers of certain chemicals to report general production, use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35).

The preamble to the rule explained that EPA would amend the list of chemicals subject to the Preliminary Assessment Information Rule when necessary to collect information on additional chemicals. This amendment adds the chemical that the ITC's Fourteenth Report recommended for EPA's testing consideration.

Under TSCA section 4(e), EPA must respond to the ITC-designated chemicals within 12 months by initiating rulemaking or issuing a notice for publication in the **Federal Register** explaining why such action is not being taken. EPA must also consider chemicals that the ITC recommends for testing without statutory designation of a time period for EPA response.

The ITC's Fourteenth Report, published in the **Federal Register** of May 29, 1984 (49 FR 22389) designated five individual chemicals for testing consideration and EPA response within 12 months. The Fourteenth Report also recommended one chemical for testing consideration without stating a given time period for EPA's response. EPA will use data from this rule to evaluate risks associated with this chemical (recommended, but not designated for 12-month response) and to determine whether the chemical should be included in testing rules under TSCA section 4.

This amendment of the PAI rule was proposed for public comment as published in the **Federal Register** of November 5, 1984 (49 FR 44218). The Agency did not receive any comments.

II. Summary of This Rule

Under 40 CFR 712.30(a), EPA is amending the list of chemicals by adding 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7), which was added to the section 4(e) Priority List (but not designated for response by EPA within 12 months) by the ITC in its Fourteenth Report.

A Preliminary Assessment Information Manufacturer's Report must be submitted within 60 days after the

effective date of the final rule under section 8(a) of TSCA.

In a separate action, the Agency is adding this recommended chemical to the section 8(d) Health and Safety Data Reporting Rule.

III. Reporting Requirements

All persons who manufactured or imported the chemical named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each inporting or manufacturing site which produces the subject chemical substance. This form must be submitted to the Agency no later than 60 days after the effective date of this final rule. Copies of the form are available from the TSCA Assistance Office at the address given above.

Manufacturers who qualify as small with respect to the previously precribed standards are exempt from this rule under 40 CFR 712.25(c).

Under § 712.30(a)(3) of the Preliminary Assessment Information rule, a company which has voluntarily submitted a Manufacturer's Report to the ITC will be allowed to submit a copy of the original report to EPA. Also under § 712.30(a)(3), persons who previously and voluntarily provided EPA with a Manufacturer's Report on the substance named in § 712.30(l) must notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission and must follow all other procedures outlined in that section.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the Notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by the EPA no later than 60 days after the effective date of the final rule.

V. Economic Impact

Employing the analysis prepared for the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982, as well as other relevant data, the Agency has estimated the impact of the addition of this chemical on the firms that must report and upon the Agency in terms of data processing costs.

The Agency, using the TSCA Inventory as the data source, identified five companies operating five sites as manufacturers of the chemical. One of the companies subject to reporting for this rule appears to qualify as a small business as defined in 40 CFR 712.25(c). Thus, four firms (or four sites) are expected to report for this rule. A total of four reports are expected.

The costs for reporting are broken down as follows:

Reporting Cost	
(a) 4 reports expected at $515/report	$2,060
(b) 4 familiarization cases at $590/case	2,360
Total	$4,420
Average cost per site	$1,105
Average cost per firm	$1,105

Reporting Burden	
(a) Familiarization (18 hours/site times 4 sites)	72
(b) Reporting (16 hours/report times 4 reports)	64
Total	136

EPA Cost	
Processing Cost=$80/report times 4 reports	$320

VI. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or in the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA will promulgate this rule for purposes of judicial review 2 weeks after publication in the **Federal Register.** The effective date has been calculated from the promulgation date.

VII. Rulemaking Record

The public record for this rulemaking is a continuation of the record (OPTS-82004) for the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982 (47 FR 26992). All documents, including the index to this public record, are available for public inspection in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M Street SW., Washington, D.C. 20460. This record includes the following types of information considered by the Agency in developing this rule:

1. The Proposed Rule (49 FR 44218, November 5, 1984).

2. All relevant support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

5. Any factual information considered by the Agency in developing the rule.

EPA requests that, between the date of this notice and the effective date of this rule, persons identify and report any perceived errors or omissions in the record.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, a significant increase in costs or prices, or any of the adverse effects described in the Executive Order. This rule is expected to have a one-time cost of approximately $4,420.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (Pub. L. 96-354) because it will not have a significant economic impact on a substantial number of small entities. Only four companies are expected to report under this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information collection requests by Federal agencies. OMB approved the reporting provisions contained in this request and issued OMB control number 2000-0420.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and Recordkeeping and requirements.

(Sec. 8(a), Pub. L. 94-469, 90 Stat. 2027 (15 U.S.C. 2607(a))).

Dated: March 14, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 712—[AMENDED]

Therefore, 40 CFR 712.30 is amended by adding paragraph (l) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(l) A Preliminary Assessment Information Manufacturer's Report must be submitted by July 8, 1985 for the following chemical:

CAS No.	Name
328-84-7	3,4-dichlorobenzotrifluoride.

[FR Doc. 85-6960 Filed 3-22-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 716

[OPTS-84015 FRL-2803-6]

Health and Safety Data Reporting Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7) to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). This chemical substance was recommended for testing by the Interagency Testing Committee (ITC), in its Fourteenth Report to EPA, but not designated for 12-month review by EPA.

DATE: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on April 8, 1985. This regulation becomes effective on May 8, 1985.

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

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0004.

I. Background

EPA issued regulations under section 8(d) of TSCA, which were published in the **Federal Register** of September 2, 1982 (47 FR 38780) to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers and processors. Other persons in possession of such studies may be asked to submit them on a voluntary basis. The rule established standardized reporting requirements and provides for amending the list of chemicals subject to the rule. Chemicals may be added that have been recommended by the ITC for testing consideration under section 4 of TSCA or have been separately selected by the Environmental Protection Agency for evaluation.

The ITC, established under section 4(e) of TSCA (15 U.S.C. 2603(e)), recommends chemical substances, categories of substances, and mixtures for priority consideration by the EPA in the issuance of testing rules under section 4(a) of TSCA (15 U.S.C. 2603(a)). Section 4(e) directs the ITC to revise its list of recommendations every 6 months as the ITC determines to be necessary.

The chemical to be added to the rule by this amendment was recommended for testing consideration by the ITC in its Fourteenth Report. This amendment to the 8(d) Health and Safety Data Reporting Rule was proposed for public comment as published in the **Federal Register** of November 5, 1984 (49 FR 44220). The Agency did not receive any comments.

Under the rule implementing section 8(d) of TSCA, EPA will acquire unpublished health and safety studies on this chemical from manufacturers and processors of the chemical. The Agency will use the studies to support its investigations of the risks posed by the chemical and, in particular, to support its decisions whether to require industry to test the chemical under section 4 of TSCA.

II. Summary of This Rule

Under 40 CFR 716.17(a), EPA is amending the list of chemicals by adding 3,4-dichlorobenzotrifluoride, CAS No. 328-84-7, which was added to the section 4(e) Priority List (but not designated for response by EPA within 12 months) by the ITC in its Fourteenth Report.

In addition to adding this chemical recommended by the ITC to the section 8(d) Health and Safety Data Reporting Rule, the Agency, in a separate action, is adding the chemical to the list of substances and mixtures for which a completed Preliminary Assessment Information report must be submitted under section 8(a) of TSCA.

III. Economic Analysis

EPA estimates that submitting the required data on this additional chemical will cost approximately $6,700. This consists of the following:

Corporate Rule Review	$2,280
Corporate Review (site identification)	684
File Search	1,323
Title Listing	57
Photocopying (materials & labor)	264
Managerial Review	1,672
Ongoing Reporting	456
Total	6,736

If we assume ±30 percent margin of error in these estimates the range of probable cost varies from $4,690 to $8,710.

A detailed explanation of EPA's method for calculation of the above figures is to be found in the Reports Impact Analysis contained in the public record for this rule.

IV. Judicial Review

Judicial review of the final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or in the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA will promulgate this rule for purposes of judicial review 2 weeks after publication of the rule in the **Federal Register.** The effective date has been calculated from the promulgation date.

V. Rulemaking Record

The public record for this rulemaking is a continuation of the record (OPTS-84012) for the Health and Safety Data Reporting Rule published in the **Federal Register** of September 2, 1982 (47 FR 38780). All documents, including the index to this public record, are available for inspection in the OTS Reading Room, Rm. E-107, 401 M Street SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes the following types of information considered by the Agency in developing this rule.

1. The proposed rule (49 FR 44220).

2. All relevant support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

5. Reports Impact Analysis for 40 CFR Part 716 and this rule.

6. Fourteenth Report of the Interagency Testing Committee (ITC); 49 FR 22389.

7. Minutes, summaries, or transcripts of any public meeting held to develop this rule.

EPA requests that, between the date of this notice and the effective date of this rule, persons identify and report any perceived errors or omissions in the record.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy. It is expected to have a total cost to the industry of approximately $6,700. It does not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities since only three companies are expected to report under this rule.

C. Paperwork Reduction Act

The final section 8(d) rule (40 CFR Part 716) has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (PRA) of 1980, 44 U.S. 3501 *et seq.* The OMB control number is 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

(Sec. 8(d), Pub. L. 94-469, 90 Stat. 2029 (15 U.S.C. 2607(d)))

Dated: March 14, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore 40 CFR 716.17 is amended by adding paragraph (a)(9) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(9) As of May 8, 1985, the following chemical substance is subject to this subpart:

CAS No.	Name
328-84-7	3,4,-dichlorobenzotrifluoride.

[FR Doc. 85-6958 Filed 3-22-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 205

General Administration—Public Assistance Programs; Quality Control Requirements

CFR Correction

In the October 1, 1984 revision of Title 45 (Parts 200 to 499) of the Code of Federal Regulations, §§ 205.42 (d)(1)(ii) and 205.44 were incorrectly published.

1. On page 31, § 205.42, paragraph (d)(1)(ii), the last sentence of the paragraph and the last sentence of the Example which follows the paragraph, remove the words "4 percent".

2. On page 35, § 205.44, paragraphs (e) through (h) were inadvertently omitted. For the convenience of the user, the section is republished in its entirety.

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1984.

(a) *Purpose and applicability.* This section provides the rules we will use beginning with October 1984 to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State, and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(b) *Definitions.* For the purposes of this section—"Annual assessment period" means the 12-month period October 1–September 30.

"Incorrect assistance payments" means payments to people who are ineligible for a payment and overpayments to eligible people.

"National standard" means a four percent payment error rate for Guam, Puerto Rico and the Virgin Islands and a three percent payment error rate for all other States.

"Payment error rate" means the dollar amount of incorrect assistance payments a State has made expressed as a percentage of the State's total assistance payments.

"We," "us" or "our" mean the Department of Health and Human Services or the Social Security Administration.

(c) *General.* In these rules we are establishing national standards of four percent for Guam, Puerto Rico and the Virgin Islands and three percent for all other States for incorrect payments in the AFDC program. These standards will be used to measure performance of the States in each annual assessment period.

(d) *How we will measure a State's performance.* We will use the information provided by the Federal/State quality control system.

(1) This system measures the dollar amount of incorrect payments in each annual assessment period by reviewing a statistically valid sample of cases selected during each month of the assessment period. The sample results are then projected to the universe of all cases.

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution, we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods: error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

(e) *Cost of determining an error rate for States other than Guam, Puerto Rico and the Virgin Islands.* In any case where it is necessary for us to determine a State's error rate for a fiscal year because the State fails to cooperate with us by not providing the information required of the State in accordance with § 205.40 of these rules, the following procedure will apply. Pursuant to section 403(i)(3)(A) of the Act, notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3) for the proper

and efficient administration of the State plan shall be reduced by the amount necessary (deducted without regard to any other reduction under this section) to offset all expenditures the Federal government has incurred in order to determine the State's error rate for any fiscal year in which that State has failed to provide the necessary error rate data. All amounts, both direct and indirect expenditures, shall be deducted generally no later than the second quarter following the quarter in which the costs of compiling the data for determining the State's error rate are available.

(f) *If a State fails to meet the established error rate.* If a State does not meet the national standard for any assessment period, we will reduce our matching funds to the State for that period, unless a State can show that it made a good faith effort to meet the national standard. If a State uses the regular Federal percentage in § 403(a)(1) of the Act for FFP and has an average monthly payment per recipient of more than $32 in an assessment period, an adjustment will be made to the State's error rate for purposes of determining the amount of reduction in our matching funds.

Example.—In fiscal year 1985, the applicable national standard for a particular State is three percent. The State's payment error rate for the assessment period, October 1, 1984 through September 30, 1985, was 4.4 percent. Because the 4.4 percent error rate exceeds the national standard by 1.4 percentage points, we will reduce our Federal matching funds by 1.4 percent of the Federal share of the dollars the State paid to recipients in the form of assistance payments under its AFDC program during that year.

(g) *When we will reduce a disallowance because a State has made a good faith effort.* (1) A State will have 30 days after receipt of a notice of intent to disallow or 15 months after the end of each fiscal year, which ever comes first, to show that it made a good faith effort to meet the national standard. If we find that the State did not meet the national standard despite a good faith effort, we will reduce the funds being disallowed in whole or in part as we find appropriate under the circumstances shown by the State. A finding may be made that a State did not meet the national standard despite a good faith effort under certain limited circumstances. The burden of proof for showing that a good faith effort was made rests entirely with the State.

(2) Some examples of the limited circumstances under which we may find that a State did not meet the national standard despite a good faith effort are—

(i) Disasters such as fire, flood or civil disorders, that require the diversion of significant personnel normally assigned to AFDC eligibility administration, or destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations.

(ii) Stirkes or State staff or other government or private personnel necessary to the determination of eligibility or processing or case changes.

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulations, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for any consecutive six-month period in an assessment period.

(iv) The State has taken the action needed to meet the national standard, but the national standard was not met, and the State has demonstrated why these actions were not successful in meeting the standard. Request for a waiver under this criterion will not be considered unless a State has demonstrated some error reduction from the last assessment period or has achieved an error rate for the measurement period that does not exceed its target error rate by more than one-third despite an increase in error rate. If a State has met the error reduction requirement above, we will evaluate requests for a good faith waiver based on the following factors:

(A) Demonstrated commitment by top management to the error reduction program, e.g., priorities and goals clearly enunciated to staff and acted upon, accountability for performance, acquisition of necessary resources, implementation of statutory and regulatory provisions intended to reduce errors, e.g., monthly reporting, retrospective budgeting, direct involvement of top management in activities related to error reduction:

(B) Sufficiency and quality of manual and automated systems and the effective use of such systems, designed to reduce errors, that are operational in the State, e.g., BENDEX, FAMIS, interjurisdictional matches, account number validation, computer matches, local agency case monitoring systems, supervisory reviews, verification procedures;

(C) Use of effective systems and procedures for the statistical and program analysis of QC and related data, e.g., statistical analyses by error element, tests of significance, augmented samples, tabulations and cross-tabulations, geographic breakdown of QC and related data, error prone profiles, special studies;

(D) Effective planning, management, execution and evaluation of the corrective action process, e.g., corrective action committees, assignment of responsibilities, milestones for completing tasks, monitoring of progress in completing tasks, completion of tasks, implementation of corrective actions; and

(E) Operation of a quality control system in accordance with Federally prescribed policies, procedures, and time limits for sampling, conducting case reviews, and submitting QC data and reports.

(3) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources is not a basis for finding that a State failed to meet the national standard despite a good faith effort.

(h) *Disallowances subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 30 days from the date of our notice. The regular procedures for appeal of a disallowance will apply including review by the Commissioner and by the Grant Appeals Board (see 45 CFR Part 16). This appeal provision, as it applies to AFDC Quality Control disallowances, is not applicable to the Commissioner's decision on a State's "good faith" waiver request.

BILLING CODE 1505-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 81, 83, 87, 90, 94, 95 and 97

Clarification of Usage of Emission Designators in the Private Radio Services

March 8, 1985.

AGENCY: Federal Communications Commission.

ACTION: Notice Regarding Emission Designators.

SUMMARY: This document's purpose is to remind applicants for licenses in any of the private radio services of the correct usage of emission designators. In the Final Rule in 80-739 (WARC proceeding), published on December 14, 1984 (49 FR 48694), new emission designators were approved by the Commission. However, they are not to be used at this time.

FOR FURTHER INFORMATION CONTACT: Rick Kenney, (202) 632-6497.

Clarification of usage of Emission Designators in the Private Radio Services

Applicants for licenses in any of the private radio services are reminded *not* to use the new emission designators approved by the Commission last year. The new designators were published in the **Federal Register** December 14, 1984, but the automated license processing system for PRB applications are not yet ready for them.

Applicants should continue to use the old designators until further notice. The old designators for applicants in Parts 81, 83, 87, 90, 94, 95 and 97 are listed in § 2.201 of the Commission's rules, as published in the October 1984 edition of title 47, Code of Federal Regulations (47 CFR).

For information, call the Licensing Division in Gettysburg, Pa., at (717) 337-1212, or Rick Kenney, at (202) 632-6497.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-6414 Filed 3-22-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 178, and 179

[Docket HM-139G; Amdt. Nos. 172-97, 173-187, 178-84, and 179-38]

Conversion of Individual Exemptions Into Regulations of General Applicability

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on the data and analyses supplied in selected exemption applications or from existing exemptions. The need for this action has been created by the public demand to make available new packagings and shipping alternatives that have proven themselves safe under the Department's exemptions program. The intended effect of these amendments is to provide wider access to the benefits of transportation innovations recognized and shown to be effective and safe.

EFFECTIVE DATE: These amendments are effective April 22, 1985. However, compliance with the regulations as amended herein, is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590 (202)-426-2075.

SUPPLEMENTARY INFORMATION: On August 28, 1984, the MTB published Notice No. 84-9 (49 FR 34044) under Docket HM-139G which proposed to amend the Hazardous Materials Regulations by incorporating the provisions of certain DOT exemptions into the general regulations. The public comment period ended October 31, 1984.

The MTB received fifteen comments from the general public on Notice 84-9.

Five of the commenters expressed their approval and endorsed the changes as proposed. All of the other comments were favorable and a few recommended minor changes.

The majority of the comments received were in reference to DOT-E 8129 and DOT-E 8445 concerning overpacking waste materials for disposal (i.e., "Lab packs"). The suggested comments were as follows:

(a) Allow more than one hazard class in one outside drum.

(b) Increase the gross weight from 200 pounds to 450 pounds.

(c) Eliminate the private or contract motor carrier restriction.

(d) Require only enough cushioning material to prevent movement or damage to the inner packaging.

(e) Allow the use of any outside DOT specification container capable of passing the required tests. Also, allow the use of a DOT specification fiberboard box lined with a poly-liner.

One commenter requested that the provisions of DOT-E 9154 become a part of the amendments proposed under Docket No. HM-139G. This exemption authorizes the use of a non-DOT specification steel drum of 19-gauge thickness to be used for those hazardous materials that are authorized to be packaged in a 20/18 gauge, 55-gallon capacity, DOT-17E steel drum.

One commenter requested that DOT-E 9182, DOT-E 9241, and DOT-E 9244 be added as a part of this rulemaking. All three of these exemptions were issued to the same Company for the transportation of "Explosives pest repellant devices".

The last commenter suggested that the proposed shipping name "Explosive pest control devices" authorized by DOT-E 9182, DOT-E 9241, and DOT-E 9244 be changed to "Pyrotechnic wildlife dispersal devices".

Concerning DOT-E 8129 and DOT-E 8445, MTB does not agree that more than one hazard class should be allowed in one outside drum. It is noted that DOT-E 8129 specifically states that each outer packaging must contain only chemically compatible materials on the same hazard class. This restriction does not appear in DOT-E 8445, as presently written. Although we are not aware of the occurrence of any specific transportation compatibility problems under DOT-E 8445, the potential for such problems in both transportation and at the treatment or storage facility exists. The MTB realizes that it may be more convenient and cost effective for a shipper to mix hazard classes when the materials are compatible. Because of added risks of this practice, we do not believe that the regulations should be amended at this time to allow different hazard classes in one outside drum.

The original petitioner of DOT-E 8445 requested that the restriction proposed in § 173.12(d)(1) be deleted because the exemption allows mixing of inside packages of different hazard classes in the same outside packaging as long as the materials are compatible and not capable of evolving a dangerous quantity of heat, gas, or Class A poison, if mixed. As indicated above, the MTB does not agree that this rulemaking should allow the mixing of different hazard classes in a single outside packaging. DOT-E 8445 will not be eliminated by this rulemaking. In view of the fact that mixing different hazard classes in one outside packaging may cause problems at disposal sites, the MTB does not anticipate heavy activity under DOT-E 8445. Also, the suggestion that the materials to which § 173.12 would apply to be limited to those for which exceptions are allowed in § 172.101, column 5(a) is not adopted in this rule.

The maximum gross weight has been increased to 450 pounds or the rated capacity of drum; whichever is less.

The MTB does not agree that the restriction on the use of only private or contract motor carriers should be eliminated. The use of private or contract motor carriers allows better control of the transportation of waste material. After a reasonable period of time, when more transportation experience is received, the MTB may consider authorizing the use of common motor carriers.

The use of only enough cushioning material to prevent movement or damage to the inner packaging may not be a safe practice. If enough cushioning material is used to prevent damage to the inner packaging and to asborb the

liquid contents, there would not be any leakage even if both the inner and outside packagings failed. Considering that the outer packaging may be a fiber drum, this is not an unlikely event. For this reason, MTB is retaining the requirement that enough cushioning material be used to absorb the total liquid contents. Also, the MTB does not agree that expanding the use of outside packagings in addition to those authorized under DOT-E 8129 and DOT-8445 is a safe practice.

The suggestion of one commenter to include the provisions of DOT-E 9154 which authorizes the use of a non-DOT specification steel drum into this rulemaking is denied, but will be considered in Docket HM-181.

Exemptions DOT-E 9182, DOT-E 9241, and DOT-E 9244 were issued after Notice No. 84-9 was published. Although the referenced exemptions require the proper shipping name to be "Explosive pest repellent devices" instead of "Explosive pest control devices", the packaging and explosive contents authorized by DOT-E 7085, DOT-E 8595, and DOT-E 8646 for the transportation of "Explosive pest control devices" are very similiar to the "Explosive Pest Repellent Devices" authorized by DOT-E 9182, DOT-E 9241, and DOT-E 9244. A cursory review indicates that two of the new exemptions may be eliminated by these amendments. A further review is being made to determine exactly how DOT-E 9182, DOT-E 9241, and DOT-E 9244 were affected by these amendments.

The Materials Transportation Bureau has determined that this document is not a "major rule" under the terms of Executive Order 12291 or significant under DOT's regulatory policies and procedures (44 FR 11034). A final regulatory evaluation was not prepared as the economic impact of these amendments has been found to be minimal.

Based on limited information available concerning size and nature of entities likely to be affected by this amendment, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

The following list of **Federal Register** Thesaurus of Indexing Terms applies to this rulemaking:

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 178

Hazardous Materials Transportation, Shipping container specifications.

49 CFR Part 179

Hazardous materials transportation, Railroad safety.

In consideration of the foregoing, 49 CFR Parts 172, 173, 178, and 179 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. In § 172.101, the Hazardous Materials Table is amended by adding, removing, or revising the following entries:

§ 172.101 Hazardous materials table.

EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	ADD										
	Barium styphnate, monohydrate. See Initiating explosive.										
	Explosive pest control devices.	Class C explosive		Explosive C	None	173.100	50 pounds	150 pounds	1,3	1,3	
	Initiating explosive *barium styphnate, monohydrate, lead styphnate (lead trinitroresorcinate).*	Class A explosive		Explosive A	None	173.74	Forbidden	Forbidden	6	5	
	REMOVE										
	Initiating explosive (*lead styphnate (lead trinitroresorcinate)*).	Class A explosive		Explosive A	None	173.74	Forbidden	Forbidden	6	5	
	REVISE										
	Carbon bisulfide, *or* Carbon disulfide (*RQ 5000/2270*).	Flammable liquid	UN1131	Flammable liquid	None	173.121	Forbidden	Forbidden	1	5	Keep cool. Not permitted on any vessel transporting explosives, except that quantities not exceeding 200 pounds may be transported on such vessels under conditions approved by the Captain of the Port.

+EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	Nickel carbonyl	Flammable liquid	UN1259	Flammable liquid and Poison.	None	173.126	Forbidden	Forbidden	1	5	Shade from radiant heat. Segregation same as for flammable liquids. Not permitted on a vessel transporting explosives, except that quantities not exceeding 200 pounds may be transported on such vessels under conditions approved by the Captain of the Port.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. To add § 173.12 to read follows:

§ 173.12 Exceptions for shipment of waste material.

(a) *General.* Waste material meeting the hazard class definition of a flammable liquid, flammable solid, oxidizer, corrosive material, Posion B or ORM–A, B, C, and E are excepted from the specification packaging requirements of this subchapter if packaged in combination packagings in accordance with this section and transported for disposal or recovery by private or contract motor carrier by highway only. In addition, a generic proper shipping name from § 172.101 may be used in place of specific chemical names, when two or more waste materials in the same hazard class are packaged in the same outside packaging, provided the waste materials are chemically compatible.

(b) *Outside packagings.* The outside packaging must be a DOT specification metal or fiber drum. It may also be a polyethylene drum capable of withstanding: (1) The vibration and compression tests specified in § 178.19–7(c) (1) and (2), except the compression test value must be no less than 2400 pounds, and (2) a four-foot drop test as specified in § 178.19–7(a)(1).

(c) *Inside packagings.* The inside packagings must be either glass packagings not exceeding 1-gallon rated capacity, or metal or plastic packagings not exceeding a rated capacity of 5 gallons.

(d) *Additional packaging requirements.* The following additional requirements are applicable:

(1) Each outside packaging may only contain one hazard class and the materials must be chemically compatible;

(2) Inside packagings of liquid must be surrounded by a compatible absorbent material capable of absorbing the total liquid contents; and

(3) Gross weight may not exceed 450 pounds or the rated capacity of the drum; whichever is less.

(e) *Prohibited materials.* The following materials are not authorized under the provisions of this section: acrolein; bromine pentafluoride; bromine trifluoride; chloric acid, chlorine trifluoride, nitric acid, fuming; pyroforic liquids; and sulfuric acid, fuming.

3. In § 173.74, paragraphs (a), (b), and (c) are revised to read as follows:

§ 173.74 Lead styphnate.

(a) The offering of lead styphnate (lead trinitroresorcinate) or barium styphnate, monohydrate in a dry condition for transportation is forbidden, except as a component of manufactured articles such as percussion caps, detonators, blasting caps, and exploders.

(b) Lead styphnate (lead trinitroresorcinate) or barium styphnate, monohydrate must be packed wet with at least 20 percent by weight of water in a Specification 5 or 5B (§§ 178.80, 178.82 of this subchapter) metal barrel or drum, or a Spec. 17H (§ 178.118 of this subchapter) metal drum (single-trip), lined with a heavy, close-fitting jute bag closed by secure sewing. The lead styphnate (lead trinitroresorcinate) or barium styphnate, monohydrate shall be placed in an inside bag made of rubber or rubberized cloth. This bag should be divided into a number of smaller packages. Inside the bag and over the lead styphnate, (lead trinitroresorcinate) or barium styphnate, monohydrate there must be placed a cap of the same fabric and of the same diameter as the bag. The bag and contents must be packed in the center of the metal barrel or drum, and must be entirely surrounded by at least three inches of well-packed sawdust saturated with water. The barrel or drum must be inspected carefully and be determined free of leaks. The dry weight of lead styphnate (lead trinitroresorcinate) or barium styphnate, monhydrate in one outside container may not exceed 150 pounds.

(c) If lead styphnate (lead trinitroresorcinate) or barium styphnate, monhydrate is to be transported during freezing weather it must be wet with a mixture of denatured ethyl alcohol and water so that it does not freeze.

* * * * *

4. § 178.100, paragraph (ii) is added to read as follows:

§ 178.100 Definition of Class C explosives.

* * * * *

(ii) Explosive pest control devices, class C explosives, consist of a cardboard-pasteboard type tube not exceeding 4 inches in length and 3/4 inch in diameter or a shotgun shell type having an explosive projectile. They may contain a mixture of potassium perchlorate, aluminum power, sulfur, black powder, smokeless powder or similiar pyrotechnic mixture. The component which produces the audible effect may not contain more than 40 grains of explosive composition. Devices and packaging must be of a type examined by the Bureau of Explosives of the Bureau of Mines and approved by the Associate Director for HMR.

§ 178.127 [Amended]

5. In § 178.127 the flash point "30 °F." is amended to read "25 °F." at each of the three places it appears.

* * * * *

6. In § 178.133, paragraph (a)(1) is revised; paragraph (a)(2) is added and the introductory text of paragraph (b) is revised to read as follows:

§ 178.133 Spirits of nitroglycerin.

(a) Spirits of nitroglycerin means nitroglycerin in ethyl alcohol or in propylene glycol. Solutions of nitroglycerin means nitroglycerin in acetone. These mixtures and solutions may not contain more than 10 percent by weight of nitroglycerin. They must be packed in specification packings as follows:

(1) Specifications 15A, 15B, 15C, 16A, 19A, or 19B (§§ 178.168, 178.169, 178.170, 178.185, 178.190, 178.191 of this subchapter). Wooden boxes lined with paraffined paper, Spec. 2L (§ 178.30 of this subchapter), and with inside packagings securely closed with rubber stoppers tied in place. The inside packagings must be entirely surrounded by at least 2 inches of dry, fine sawdust or kieselguhr. Not more than 6 quarts of the spirits or solutions may be packed in any outside wooden box. Inside packagings made of metal are not authorized.

(2) Specification 12A or 12B (§§ 178.210 or 178.205 of this subchapter). Fiberboard boxes or Spec. 21C (§ 178.224 of this subchapter) fiber drums laminated with a 0.004 inch polyethylene lining. Inside packagings must be Spec. 2E polyethylene bottles or Spec. 2U polyethylene containers not exceeding 5 gallons capacity each, overpacked in a strong polyethylene bag. The inside packagings must be entirely surrounded by at least 2 inches of dry, fine sawdust or kieselguhr. Not more than 6 quarts of the nitroglycerin mixture may be packed in one outside packaging, except that a maximum of 5 gallons of a nitroglycerin-propylene glycol mixture may be packaged in one Spec. 2U and overpacked in the fiber drum.

(b) Spirits of nitroglycerin consisting of not over 1 percent by weight of nitroglycerin in ethyl alcohol or propylene glycol, in addition to containers specified in paragraphs (a)(1) and (a)(2) of this section, may be packed in specification packagings as follows:

* * * * *

7. In § 173.164, paragraph (a)(6) is revised to read as follows:

§ 173.164 Chromic acid or chromic acid mixture, dry.

(a) * * *

(6) Specification 21C (§ 178.224 of this subchapter). Fiber drums lined with a plastic material having a minimum thickness of 0.003-inch. Net weight may not exceed 115 pounds.

* * * * *

8. In § 173.217, paragraphs (a)(3), (a)(6), and (a)(8) are revised to read as follows:

§ 173.217 Calcium hypochlorite, hydrated; calcium hypochlorite mixture, dry; lithium hypochlorite mixture, dry; mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry; potassium dichloro-s-triazinetrione, dry; sodium dichloro-s-triazinetrione, dry; trichloro-s-triazinetrione, dry.

(a) * * *

(3) Specification 21C (§ 178.224 of this subchapter). Fiber drums with inner ply consisting of a laminated sheet of paper and aluminum foil, internally coated. Cover of drum must be gasketed. Authorized net weight not over 400 pounds.

* * * * *

(6) Specification 56 (§§ 178.251, 178.252 of this subchapter). Metal portable tank. Authorized only for calcium hypochlorite, hydrated; mono-(tri-chloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry, potassium dichloro-s-triazinetrione, dry; sodium dichloro-s-triazinetrione, dry; and trichloro-s-triazinetrione, dry. For rail transportation, see § 174.63(b) of this subchapter.

* * * * *

(8) Specification 12B (§ 178.205 of this subchapter). Fiberboard boxes with inside polyethylene bottles with a minimum wall thickness of 0.015 inch. Not more than 2 polyethylene bottles may be packed in one box and each bottle must not contain more than 20 pounds net weight of the material. Packaging must be such that is will not react dangerously with or be decomposed by the commodity.

* * * * *

9. In § 173.221 paragraph (a)(13) is added to read as follows:

§ 173.221 Liquid organic peroxides, n.o.s., and liquid organic peroxide solutions, n.o.s.

(a) * * *

(13) Specification 57 (§ 178.253 of this subchapter). Metal portable tanks. Tanks are authorized only for tert-butyl cumyl peroxide. The tank may not be filled to more than 90 percent capacity.

10. In § 173.230, paragraph (a)(5) is added to read as follows:

§ 173.230 Sodium, metallic, dispersion in organic solvent.

(a) * * *

(5) Specification 17H (§ 178.118 of this subchapter). Metal drum, with one inside Specification, 5, 5C, 6B, or 6C (§§ 178.80, 178.83, 178.98, 178.99 of this subchapter) closed head metal drum not over 30 gallons capacity. Inside drum must be completely surrounded with incombustible cushioning material.

11. In § 173.245, paragraph (a)(12) is revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(12) Specification 12B (§ 178.205 of this subchapter). Fiberboard boxes with inside packagings of metal, polyethylene, or other non-fragile plastic material resistant to the lading, not exceeding 1-gallon each. A metal packaging is authorized only for a material that is not corrosive to metal. Gross weight may not exceed 65 pounds.

* * * * *

12. In § 173.257, paragraph (a)(4) is revised to read as follows:

§ 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

(a) * * *

(4) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this subchapter). Cargo tanks must be lined with rubber or equally acid-resistant material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.343–5 of this subchapter.

* * * * *

13. In § 173.262, paragraphs (a)(11) and (b)(4) are revised to read as follows:

§ 173.262 Hydrobromic acid.

(a) * * *

(11) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this subchapter). Cargo tanks must be lined with rubber or equally acid-resistant material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.343–5 of this subchapter.

* * * * *

(a) * * *

(4) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this subchapter). Cargo tanks must be lined with rubber or equally acid-resistent material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.353–5 of this subchapter.

* * * * *

14. In § 173.265, paragraph (b)(4) is revised to read as follows:

§ 173.265 Fluosilicic acid (hydrofluorosilicic acid) (hydrofluosilicic acid).

* * * * *

(b) * * *

(4) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this subchapter). Cargo tanks must be lined with rubber or equally acid-resistant material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.343–5 of this subchapter.

* * * * *

15. In § 173.266, paragraphs (f)(1) and the first three sentences of (f)(2) are revised to read as follows:

§ 173.266 Hydrogen peroxide solution in water.

* * * * *

(f) * * *

(1) Specification 103A–ALW, 103CW, 111A60ALW2 or 111A60W7 (§ 179.200, 179.201 of this subchapter). Tank cars. The 103CW and 111A60W7 tank cars must be fabricated of Type 304L, 316, or 316L stainless steel. (See §§ 173.31(a)(4) and 179.3(e) for additional requirements).

* * * * *

(2) Specification MC 310 or MC 312 (§ 178.343 of this subchapter). Cargo tanks. Tanks must be fabricated of aluminum conforming to Aluminum Association Nos. 1060, 1260, 5254, or 5652. Specification MC 312 may be fabricated of Type 304L, 316 or 316L stainless steel. * * *

16. In § 173.272, paragraphs (i)(25) and (i)(28) are revised to read as follows:

§ 173.272 Sulfuric acid.

* * * * *

(i) * * *

(25) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this subchapter). Cargo tanks must be lined with rubber or equally acid-resistant material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.343–5 of this subchapter.

* * * * *

(28) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this subchapter). Cargo tanks must be lined with rubber or equally acid-resistant material of equivalent strength and durability. Bottom outlets are authorized if they meet the requirements of § 178.343–5 of this subchapter. Not authorized for transportation by vessel.

* * * * *

17. In § 173.301, paragraph (d)(2) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders:

* * * * *

(d) * * *

(2) Manifolding is authorized for specification cylinders containing the following nonliquefied gases: boron trifluoride, carbon monoxide, ethylene, hydrogen, hydrocarbon gases, methane, nitrogen trifluoride, and tetrafluoroethylene, inhibited, except that aluminum cylinders are not authorized for boron trifluoride or nitrogen trifluoride service. Individual cylinders must be equipped with approved pressure relief devices as required by § 173.34(d) or § 173.315(i) of this Part. Each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines of these individual shutoff valves must be sufficiently flexible to prevent damage to the valves which otherwise might result from the use of rigid branch lines. A temperature measuring device may be inserted in one cylinder of a manifold installation in place of the shutoff valve.

* * * * *

18. In § 173.356, paragraph (a)(3) is renumbered (a)(4) and a new paragraph (a)(3) is added to read as follows:

§ 173.356 Thiophosgene.

(a) * * *

(3) Specification 5C (§ 178.83 of this subchapter). Steel barrels or drums made of Type 304 stainless steel.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

§ 178.168–9 [Amended]

19. In § 178.168–9, Group 1 is amended by adding "Mediterranean pine" immediately following the entry "Jack pine".

§ 178.169–9 [Amended]

20. In § 178.169–9, Group 1 is amended by adding "Mediterranean pine" immediately following the entry "Jack pine".

PART 179—SPECIFICATIONS FOR TANK CARS

21. In § 179.101–1(a), Note 4 following the Table is revised to read as follows:

§ 179.101–1 Individual specification requirements.

(a) * * *

⁴ At least the upper two-thirds of the exterior of the tank manway nozzle and all appurtenances in contact with this area of the tank shall have a finish coat of white paint; except that tanks used for hydrogen fluoride may have a dark colored band not exceeding 14 feet wide around the center of the tank in the top platform and fitting area.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53. App. A to Part 1).

Issued in Washington, D.C. on March 19, 1985.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85–6846 Filed 3–22–85; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 50, No. 57
Monday, March 25, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-78-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) that was issued by telegrams and requires revision of the FAA approved Airplane Flight Manual (AFM) to include additional emergency procedures. This amendment would require the implementation of a special emergency procedure which will allow the flight crew to bypass a jammed landing gear selector valve and extend the landing gear and, in addition, would provide for a subsequent modification of the selector valve. A jammed selector valve may prevent extension of the landing gear and thereby jeopardize safety in landing the airplane.

DATES: Comments must be received on or before April 10, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Systems and Equipment Branch, ANM-130S; telephone (206) 431-2946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion:

On June 29, 1984, telegraphic AD T84-14-51 was issued and made effective immediately to all known owners and operators of Boeing Model 757 series airplanes. The AD requires revision of the FAA approved Airplane Flight Manual (AFM) to include additional emergency procedures. This action was prompted by a report of the landing gear handle jamming in the up position following gear retraction after takeoff. With the handle jammed in the up position, hydraulic fluid is trapped in the landing gear actuators, rendering the alternate extend system useless. This would result in either a gear-up landing, or a landing with the gear only partially extended, if the crew had attempted to use the alternate extend system. The jam is caused by an internal failure in the landing gear selector valve. The telegraphic AD requires the implementation of a special emergency procedure within 24 hours of service after receipt of the telegram, which would allow the crew to bypass the jammed selector valve and extend the landing gear.

Since the issuance of the telegraphic AD, the Boeing Company has developed a modification to the landing gear selector valve which will preclude the jamming, and has provided a service bulletin describing the procedure. Completion of the modification would terminate the requirement for the emergency procedure and would allow its removal from the AFM.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an amendment to the telegraphic AD is proposed that would require incorporation of an emergency procedure in the AFM (if not already accomplished) and modification of the landing gear selector valve.

The telegraphic AD will be published at a later date. In the meantime, a copy has been included in the public docket for inspection by those who have not already received a copy.

It is estimated that 15 U.S. registered airplanes would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. A kit of parts to accomplish the proposed modification would be shipped to operators at no charge, if their order is placed prior to March 31, 1985. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 757 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is

contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by amending telegraphic airworthiness directive T84-15-51, issued June 29, 1984, as follows:

1. Renumber paragraphs 3. and 4. as 4. and 5.; and

2. Add new paragraphs 3. to read as follows:

3. Modification of Landing Gear Selector Valve.

A. Prior to December 1, 1985, modify the landing gear selector valve assembly, Boeing P/N 60B00216-7, in accordance with Boeing Service Bulletin 757-32-0033, dated September 7, 1984, or later FAA approved revision.

B. Following modification of the selector valve, the special emergency procedure implemented by paragraph 1., above, may be removed."

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on March 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-6920 Field 3-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-CE-7-AD]

Airworthiness Directives; Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec Model PZL M18 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec Model PZL M18 airplanes which would require inspection for cracks in the propeller pitch control system, the throttle control system, and the engine mounting frame struts. The FAA and the manufacturer have received reports of cracks developing in these parts which cause excessive vibration and the possible loss of engine operational control. This inspection and repair required by the proposed AD will preclude loss of engine control.

DATES: Comments must be received on or before July 29, 1985.

ADDRESSES: Wytwornia Sprzetu Komunikacyjnego Mandatory Service Bulletin No. K/02.060/83, dated October 1983, Service Bulletin No. E/02.064/84, dated April 1984, and Service Bulletin No. K/02.067/64, dated July 1984, applicable to this AD may be obtained from Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec, 39-301 Mielec, Poland or the Rules Docket at the address below.

Send comments on the proposal in duplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-7-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Aircraft Certification Staff, AEU-100, Europe, African and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. H.C. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic environmental, and emergency aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-7-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer has received reports from Model PZL M18 airplane operators that cracks initiate and gradually propagate on the propeller pitch control system load carrying tube (Part Number (P/N) D65.250.00.2) the propeller pitch control system bracket (P/N D65.012.00.1), the throttle control system torque tube (P/N D65.210.00.1) and in the factory original engine mounting frame struts. The FAA has received one Malfunction or Defect (M or D) report that the upper right hand engine mount fork was found cracked when a pilot's complaint of unusual powerplant vibration was investigated. Propagation of these cracks could lead to the eventual loss of engine control. As a result, Wytwornia Sprzetu Komunikacyjnego PZL-Mielec has issued Service Bulletin No. E/02.064/84, dated April 1984, which requires inspection for the presence of cracks, discernible deformation or corrugation of the previously mentioned parts. If defects are found, the affected parts must be replaced with new serviceable parts, or optionally in the case of the engine mount, replaced with an improved unit in accordance with Service Bulletin No. K/02.060/83 dated October 1983, and in the case of the throttle control torque tube, replaced with an improved unit in accordance with Service Bulletin No. K/02.067/84 dated July 1984. The Polish Civil Aircraft Inspection Board (CACA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Poland has classified Service Bulletin No. E/02.064/84, dated April 1984, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Polish registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CACA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Mandatory Service Bulletin No. E/02.064/84 and the mandatory classification of this service bulletin by

the CACA. Based on the foregoing, the FAA believes that the condition addressed by Service Bulletin No. E/02.064/84, dated April 1984, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require inspection for cracks in the propeller pitch control system load carrying tube and bracket, the throttle control system torque tube and the engine mounting frame struts on Model PZL M18 airplanes.

There are approximately 44 airplanes on the U.S. Registry affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $420 per airplane (based on 12 manhours to accomplish the service bulletin at $35 per manhour) to the private sector.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) by adding the following new AD:

Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec: Applies to Model PZL M18 (Serial Numbers 1Z002-01 thru 1Z012-40 inclusive) airplanes certificated in any category.

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

To prevent loss of engine control, accomplish the following:

(a) Before the first flight of each day:

(1) Visually check the following parts for the absence of discernible deformation, corrugation and cracks in accordance with Wytwornia Sprzetu Komunikacyjnego, PZL-Miezec Service Bulletin No. E/02.064/84, dated April 1984:

(i) The propeller pitch control system load carrying tube, Part Number (P/N) D65.250.00.2 (see the above Service Bulletin, sketch No. 1, sheet 1).

(ii) The propeller pitch control system bracket, (P/N) D65.012.00.1 (see the above Service Bulletin, sketch No. 1, sheet 1).

(iii) The throttle control system torque tube, (P/N) D65.210.00.1 (see the above Service Bulletin, sketch No. 1, sheet 2).

(iv) The engine mounting frame struts (see the above Service Bulletin, sketch 2).

(2) If no cracks, deformations, or corrugations are found, record compliance with paragraph (a)(1) of this AD in the aircraft maintenance records in accordance with FAR 91.173.

(3) If any crack, deformation, or corrugation is found, replace the damaged part before the next flight as follows:

(i) The propeller pitch control tube with a new serviceable part.

(ii) The propeller pitch control bracket with a new serviceable part.

(iii) The throttle control torque tube with a new serviceable part or an improved part in accordance with Service Bulletin No. K/02.067/84, dated July 1984.

(iv) The engine frame struts with new serviceable units or with an improved engine mount P/N D64.100.00.5 in accordance with Service Bulletin No. K/02.060/83, dated October 1983.

(b) The daily visual check required by paragraph (a)(1) of this AD may be performed by an individual holding a valid FAA commercial pilot certificate.

(c) Within 50 hours time-in-service (TIS) after the effective date of this AD and every 50 hours TIS thereafter:

(1) Visually inspect for cracks, using a 5X power (or greater) magnifying glass, the parts described in paragraphs (a)(1)(i) through (a)(1)(iv) of this AD in accordance with Service Bulletin E/02.064/84.

(2) If any crack is found, prior to the next flight accomplish the corrective action described in paragraph (a)(3) of this AD.

(d) The intervals between the repetitive 50 hour TIS inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishment of these inspections concurrent with other scheduled maintenance of the airplane.

(e) Aircraft may be flown in accordance with FAR 21.197 to a location where paragraphs (a)(3) and (c) of this AD can be accomplished.

(f) The daily and 50 hour TIS repetitive inspections specified by this AD are no longer required after Service Bulletin No. K/02.060/83, dated October 1983, is accomplished.

(g) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and section 11.85 of the Federal Aviation Regulations (14 CFR 11.85)

Issued in Kansas City, Missouri, on March 14, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-6921 Filed 3-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AAL-3]

Proposed Designation of Anvik, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to lower the base of controlled airspace in the vicinity of Anvik, AK, Airport to 700 feet above the surface to provide aircraft conducting flight under instrument flight rules (IFR) with exclusive use of that airspace when the visibility is less than 3 miles, thereby enhancing the safety of such operations. The circumstance which created the need for this action was the development of a public instrument approach to the Anvik, AK, Airport.

DATES: Comments must be received on or before May 9, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 85-AAL-3, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the FAA Rules Docket, Office of the Regional Counsel, Third Floor, Module F, Federal Building U.S. Courthouse, 701 C Street, Anchorage, Alaska.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 701 C Street, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist, (AAL-536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513, telephone (907) 271-5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to airspace Docket No. 85-AAL-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 701 C Street, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Alaskan Region, 701 C Street, Box 14, Anchorage, AK 99513, or by calling (907) 271-5902. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface within a 5-mile radius of the Anvik, AK, Airport and a rectangular area 18.5 statute miles by 14 statute miles on the 180° radial of the Anvik, AK, VOR. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a sufficient economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Anvik, AK (New)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Anvik Airport (lat. 62°38'50" N.) long. 160°11'18" W.); and within 9.5 miles west and 4.5 miles east of the (180 °M)(160 °T) radial from the Anvik VOR to 18.5 miles south of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Anchorage, Alaska, on March 14, 1985.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 85-6919 Filed 3-22-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket No. 50221-5021]

Local Population Estimates; Amendment to Challenge Procedure for Certain Population and Per Capita Income Estimates

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the regulations for challenges to the Census Bureau's population and income estimates. The change proposed is to revise the procedure used by the Census Bureau to release the estimates. It is proposed that the estimates be released through standard Census Bureau publications and simultaneous notification of the release in the **Federal Register**.

DATE: Comments should be submitted on or before April 24, 1985.

ADDRESS: Send comments to the Director, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Roger Herriot, Chief, Population Division, Bureau of the Census, (301) 763-7646.

SUPPLEMENTARY INFORMATION: On April 6, 1979, a Notice of Final Rule was published in the **Federal Register** (44 FR 20646) that established standard procedures by which localities could challenge the population and income estimates made by the Bureau of the Census. The regulations (1) require that an informal challenge be filed no more than 180 days after the release of the estimates by the Bureau of the Census, (2) require a locality to complete an informal review jointly with the Census Bureau before a formal challenge may be filed, (3) specify the appointment of a qualified hearing officer during the formal challenge stage to receive both written and oral evidence under oath, (4) provide for a formal hearing, and (5) provide for a final decision by the Director of the Census Bureau. These rules require that the Census Bureau release the estimates by sending individual mailings of the figures to each local government and simultaneous publication of release notification in the **Federal Register**.

These procedures were followed for population estimates that were produced for 1977, 1978, and 1982. In 1982, approximately 1,000 localities went through the informal challenge process.

The proposed change in the regulation would retain all of the provisions in the current challenge process and would alter only the way in which the data are released. The 1970s was a period of rapid growth in Federal legislation that used population data to administer the programs. During that period, it was necessary (1) to inform localities that this was occurring, (2) to provide instruction on how the figures were developed through close contact with the localities, and (3) to remind them that new figures were being released each time. The first two objectives have

been accomplished and the third can be handled through a less costly approach than is now being used.

The proposed change would provide for the release of the estimates through the standard Census Bureau publication and release channels used for all other Census Bureau data, and through a simultaneous notification of the release in the **Federal Register**. The standard Census Bureau release procedures make use of established Census Bureau publication series such as the *Current Population Reports,* electronic publishing through the computerized nationwide data services, Census Bureau news releases, and the newsletters of the Census Bureau such as the Data User News and the Federal-State Cooperative Program's electronic bulletin board.

In addition, the state contact agencies in the Federal-State Cooperative Program and in the State Data Center program are active in assuring that localities are aware of current data releases. The Federal agencies that use the statistics in their programs also often notify the localities about the figures before the new data are used. The Data Improvement Program at the Office of Revenue Sharing is an example of such a program that mirrors the Census Bureau's release and review process.

This proposed amendment does not constitute a major rule as defined in Executive Order 12291, nor does it contain a collection of information for purposes of the Paperwork Reduction Act.

The General Counsel has certified to the Small Business Administration that pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) the proposed change in the regulation would retain all of the provisions in the current challenge process and would alter only the way in which the data are released and, therefore, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 90

Census data, Statistics.

PART 90—[AMENDED]

To effect this change, it is porposed to amend the Challenge Procedures Regulation (15 CFR Part 90 § 90.5) by revising the second sentence of that section to read as follows:

§ 90.5 When an informal challenge may be filed.

* * * Publication by the Bureau of the Census and simultaneous publication of a release notification in the **Federal Register** shall constitute release.* * *

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–7008 Filed 3–22–85; 8:45 am]

BILLING CODE 3510–07–M

FEDERAL TRADE COMMISSION

16 CFR Part 443

Health Spas Trade Regulation Rule Proceeding

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing comments on staff report and presiding officer's report.

SUMMARY: The Federal Trade Commission is seeking public comment on the Staff Report, filed January 22, 1985 and the Presiding Officer's Report, filed May 4, 1979 in the Health Spas Trade Regulation Rule proceeding. The time for filing comments is hereby extended from March 25, 1985 to May 24, 1985.

DATE: Written comments on the Reports will be accepted by the Commission until May 24, 1985.

ADDRESSES: Written comments should be sent to: Presiding Officer James P. Greenan, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Walter Gross, Attorney, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580; telephone 202–523–3826.

SUPPLEMENTARY INFORMATION: By **Federal Register** notice of January 22, 1980 (50 FR 2829) the Federal Trade Commission sought written comment on the Spas Trade Regulation Rule proceeding (Public Record 215–50). The original comment period was to end on March 25, 1985.

In granting the Motion of one of the participants in the rulemaking proceeding for extension of time within which to file comments, the Presiding Officer has extended the comment period for an additional 60 days. May 24, 1985 is the date set by which time comments should be received.

James P. Greenan,

Presiding Officer.

[FR Doc. 85–6936 Filed 3–22–85; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–14421; S7–10–85]

Separate Accounts Funding Scheduled Premium Variable Life Insurance Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Commission is publishing for comment proposed rule amendments that would revise the conditions under which insurance company separate accounts are permitted to offer scheduled premium variable life insurance contracts. The amendments are intended to conform the various provisions of rule 6e–2 under the Investment Company Act of 1940 to those of rule 6e–3(T), a companion rule.

DATE: Comments must be received on or before May 10, 1985.

ADDRESSES: All comments on this matter should be sent, in triplicate, to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Such communications should refer to File No. S7–10–85 and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Special Counsel (202) 272–2061, or Robert E. Plaze, Attorney (202) 272–2622, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed amendments to rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] ("Act"), the general exemptive rule for insurance company separate accounts offering scheduled premium variable life insurance contracts ("scheduled life" or "scheduled contracts"). The proposed amendments would modify the relief provided by the rule generally to conform to the corresponding provisions of rule 6e–3(T) [17 CFR 270.6e–3(T)] under the Act, the general exemptive rule for separate accounts offering flexible premium variable life insurance contracts ("flexible life" or "flexible contracts"). Rule 6e–3(T) was adopted

on a temporary basis in Investment Company Act Release No. 14234 (Nov. 14, 1984) ("Release 14234"). [1]

Background and Discussion

The proposed amendments to rule 6e-2 are intended to conform the provisions of the rule the corresponding provisions of rule 6e-3(T).[2] The majority of changes are non-substantive and relate generally to the language and terminology used in the rule.[3] These changes are not discussed in this release. Set forth below is a brief summary of the changes that may be deemed substantive. A fuller discussion of the reasons for these changes will be found in Release 14234.

A. Paragraph (a)—The Separate Account

Paragraph (a) of rule 6e-2 sets forth the requirements that separate account of a life insurer must meet for the separate account and certain related persons to have available the exemptions provided in paragraph (b) of the rule. The proposed amendments would: (1) Include a reference in paragraph (a)(1) to the definition of "separate account" in section 2(a)(37) of the Act [15 U.S.C. 80a-2(a)(37)] (and would also delete existing paragraph (a)(4) of the rule, which contains a provision similar to section 2(a)(37)); (2) eliminate the prohibition on holding funds in the separate account corresponding to dividend accumlations; [4] and (3) permit the assets of the separate account to be derived from the sale of both scheduled and flexible contracts.

B. Paragraph (b)—The Exemptive Provisions

Paragraph (b) provides that if the separate account meets the requirements of paragraph (a), then it (and specified related persons) shall be exempt from certain enumerated provisions of the Act with respect to scheduled contracts funded by the separate account. Of the fifteen exemptions set forth in this paragraph of the existing rule, the proposed amendments would substantively change the following:

1. Paragraph (b)(1)—Sales Load Definiton

This paragraph exempts scheduled life separate accounts from the definition of "sales load" set forth in section 2(a)(35) [15 U.S.C. 80a-2(a)(35)] in order to permit them to use the special definition of sales load contained in paragraph (c)(4) of the rule. As does rule 6e-3(T)(b)(1), the proposed amendments would exempt separate accounts from various other provisions of the Act to permit deferred sales loads or sales loads deducted from cash value ("asset-based sales load") (together, "subsequent sales load").[5] Comment is requested, however, on the appropriateness of permitting asset-based sales loads in the context of scheduled life.

2. Paragraph (b)(9)—Custodianship of Assets

The proposed amendments would (1) modify paragraph (b)(9)(iv) effectively to permit a separate account, in accordance with rule 17f-4 [17 CFR 270.17f-4], to deposit its securities in a clearing agency registered with the Commission under section 17A of the Securities Exchange Act of 1934 [15 U.S.C. 78q-1] or in the bookentry system as provided by the federal book-entry regulations, and (2) modify paragraphs (b)(9)(iii) and (vi) to clarify that the life insurer may retain an independent public accountant on behalf of the separate account.[6]

3. Paragraph (b)(12)—Pricing and Processing

The proposed amendments would update this paragraph to reflect both a 1979 amendment to rule 22c-1 [17 CFR 270.22c-1] and recently proposed amendments to that rule.[7] In contrast, rule 6e-3(T) contains pricing provisions reflecting only the existing formulation of rule 22c-1; it does not include the recently proposed changes.[8] The Commission intends to conform both rules 6e-3(T) and 6e-2 to rule 22c-1 in the final form in which that rule is amended.

The proposed amendments to rule 6e-2 also would require the death benefit of a scheduled contract to be determined only on days when it could be affected by the investment experience of the separate account. This change would accommodate the proposed revision of the definition of a scheduled contract.[9]

4. Paragraph (b)(13)—Sale Load and Other Deductions

This paragraph provides exemptions from section 27 [15 U.S.C. 80a-27] and related provisions in connection with the deduction of sales load and certain fees and charges from the assets of a scheduled life separate account. The proposed substantive amendments relate to five parts of this paragraph, as discussed below.

a. *Paragraph (b)(13)(i)—Sales Load Limitation.* Existing paragraph (b)(13)(i) provides that the sales load deducted under any scheduled contract shall not exceed 9% of the payments made over a period equal to the lesser of 20 years or the anticipated life expectancy of the insured, the latter period based on the 1958 Commissioners Standard Ordinary Mortality Table ("1958 CSO Table") ("twenty year period"). Since the 1980 Commissioners Standard Ordinary Mortality Table ("1980 CSO Table") is now available and is being used by a number of insurers,[10] the Commission

[1] 49 FR 47208 (Dec. 3, 1984).

[2] In adopting rule 6e-3(T) for flexible contracts, the Commission pointed out that the rule was designed as a companion rule to rule 6e-2. Rule 6e-3(T) followed the same general approach as rule 6e-2; it differed substantively only where necessary to accommodate the unique characteristics of flexible life or where experience had shown that the provisions of rule 6e-2 needed to be revised or updated.

In the event that substantive changes in Rule 6e-3 as finally adopted affect Rule 6e-2, the Commission will consider whether reproposing portions of Rule 6e-2 is necessary. Despite this possibility, the Commission believes that it is desirable to propose amendments to Rule 6e-2 at this time to enable the amended rule to be adopted, to the extent possible, simultaneously with the final version of Rule 6e-3. A time lag between adoptions could creat operational difficulties for separate accounts in view of the differences in the two rules which presently exist.

[3] For example, the phrase "scheduled premium variable life insurance contracts" has been substituted for the phrase "variable life insurance contracts" in order to distinguish separate accounts offering scheduled contracts pursuant to rule 6e-2 from those offering flexible contracts pursuant to rule 6e-3(T).

[4] *See* Release 14234 at Section II.A. As indicated in Release 14234, even though holding dividend accumulations is arguably a characteristic of a pure investment vehicle, the Commission does not believe that permitting separate accounts to engage in this activity alters their essential nature in any manner relevent to the Act. *Id.*

[5] The exemption from section 2(a)(35) is also intended to permit a subsequent sales load. Subsequent sales loads are discussed more fully in Release 14234 at notes 16 and 27, and accompanying text. As in the case of a flexible contract subject to a subsequent sales load in the form of a periodic deduction from cash value, the life insurer would have to minitor the aggregate amount of sales load deducted in order to ensure it does not exceed the 9% limitation on sales load provided by paragraph (b)(13)(i).

[6] *See* Release 14234 at section II.B.8.

[7] *See* Investment Company Act Release 14244 (Nov. 21, 1984) [49 FR 46558 (Nov. 27, 1984)]. Existing paragraph (b)(12) generally requires cash value and death benefits to be determined not less frequently than once daily at the close of trading on the New York Stock Exchange. As amended, the parapraph would require the determination to be made Monday through Friday (except holidays), if there were a sufficient degree of trading in the portfolio securities of the separate account that the cash value of the contracts might be materially affected. The paragraph also would permit the board of directors to determine the time of day at which the determination is made.

[8] *See* Release 14234 at section II.B.11.

[9] *See* discussion *infra* at section C.1.

[10] *See* Release 14234 at sections II.C.8.

believes it would be appropriate to amend this paragraph in order to require life insurers to calculate life expectancy under this provision based on the CSO Table they use in their contracts. Thus, the amendment would require, for purposes of compliance with the sales load limitations, use of the 1958 CSO Table or the 1980 CSO Table, depending upon which the life insurer uses in its scheduled contracts. In addition, the proposed amendments to this paragraph would make the existing sales load limitation applicable to any subsequent sales load, and would clarify that sales load may continue to be deducted after the expiration of the twenty year period (subject to the "stair-step" provision, discussed *infra*).

b. *Paragraph (b)(13)(ii)—Stair-Step Relief.* The proposed amendments to this provision would provide exemptions from the requirements of sections 27(a)(3) [15 U.S.C. 80a-27(a)(3)] and 27(h)(3) [15 U.S.C. 80a-27(h)(3)] that the amount of any sales load deducted from any payment not exceed the proportionate amount deducted from any prior payment—commonly known as stair-step requirements. The amendments would modify the stair-step provisions to apply them to sales loads deducted other than from payments. Under the amendments, the amount of any subsequent sales load deducted may not exceed the proportionate amount deducted pursuant to the same method.[11]

c. *Paragraph (b)(13)(iii)—Deduction of Fees and Charges and Custodianship of Assets.* The proposed amendments to this provision provide exemptive relief from sections 27(c)(2) [15 U.S.C. 80a-27(c)(2)], 26(a)(1) [15 U.S.C. 80a-26(a)(1)] and 26(a)(2) [15 U.S.C. 80a-26(a)(2)] to permit certain fees and charges to be deducted from account assets and to permit various custodianship activities regarding those assets. The amendments, like the corresponding provisions of rule 6e-3(T), are modeled on comparable relief afforded variable annuity separate accounts by rules 26a-1 and 26a-2 [17 CFR 270.26a-1 and 270.26a-2] [12] and relief proposed to be codified in rule 26a-3.[13] In this regard, the amendments would differ from existing paragraph (b)(13)(iii) in that they provide conditional, rather than blanket relief.

The overriding condition to permitting the fees charged is that they be at cost. In connection with charges for mortality, expenses and guaranteed death benefit risks, however, the exemption seeks to ensure that the charges bear a reasonable relationship to the risks actually assumed, and also contains conditions to deal with the possibility that such charges may be used to fund distribution of the contracts. For the same reasons as were discussed in connection with rule 6e-3(T),[14] The Commission believes the proposed treatment of account charges under scheduled contracts, including the treatment of charges for mortality, expenses and guaranteed death benefit risks, is appropriate.

d. *Paragraph (b)(13)(v)—Surrender and Refund of Excess Sales Load Rights and Conversion Rights.* The proposed amendments to paragraph (b)(13)(v)(B) would permit the life insurer to offer any contractholder seeking to exercise his conversion rights the option to convert to any type of life insurance policy other than a flexible or scheduled contract, rather then to convert ony to a whole life insurance policy as the existing rule requires. As indicated in connection with rule 6e-3(T), the Commission believes the insurer should have more flexibility in offering conversion rights.[15]

e. *Paragraphs (b)(13) (vii) and (viii)—Forms.* The proposed amendments to these paragraphs would permit life insurers to design their own forms for notifying contractholders of their rights under the contract as long as the information contained therein is comparable to that required by Forms N-27I-1 and N-27I-2 [17 CFR 274.301 and 274.303], which are currently the prescribed notification forms. In addition, the amendments would permit the insurer to make personal delivery of the forms.[16]

(5) Paragraph (b)(15)—Trust Accounts

This paragraph provides certain exemptions specifically tailored for any separate account organized as a unit investment trust ("trust account"). The amendments would modify this relief to permit (1) trust accounts to be used to fund both scheduled life and flexible life contracts and (2) underlying funds of trust accounts to offer their shares to both variable life separate accounts and variable annuity separate accounts, *i.e.*, to be used for "mixed funding." While conflicts of interest conceivably could arise in the context of mixed funding, the Commission believes they are sufficiently ameliorated by the conditions of the proposed amendments. Primarily, the underlying fund's directors, a majority of whom are required to be disinterested directors, must monitor for conflicts of interest and the insurer must remedy any conflicts at its own expense.[17]

C. Paragraph (c)—The Definitions

1. Paragraph (c)(1)—Definition of Scheduled Premium Variable Life Insurance

The proposed amendments to the definition of a scheduled premium variable life insurance contract would modify the existing definition to permit a contract with a death benefit the amount of which does not necessarily vary with the investment experience of the separate account.[18] This change would permit a scheduled contract to be designed with a death benefit like that provided by an "Option I" flexible contract.[19]

The Commission is also considering the possibility of amending the definition of a scheduled contract to remove the requirement that such a contract must include a guaranteed death benefit. While this requirement has been retained in the definition,[20] comment is requested on whether such a feature is necessary.[21]

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[11] Thus, if a deferred sales load of 6% is deducted from a partial surrender, no higher rate of sales load may be deducted from a subsequent partial or full surrender. *See* Release 14234 at section II.B.12.b.

[12] Rules 26a-1 and 26a-2 were proposed in Investment Company Act Release Nos. 13705 and 13706 (January 6, 1984) and adopted in Investment Company Act Release Nos. 14065 and 14066 (July 18, 1984).

[13] Rule 26a-3 was proposed for comment in Investment Company Act Rel. No. 14190 (Oct. 11, 1984) [49 FR 40879 (Oct. 18, 1984)].

[14] *See* Release 14234 at section II.B.12.c.

[15] For a discussion of the reasons for this change, *see* Release 14234 at section II.B.12.e.ii.

[16] *Id.* at sections II.B.12.g. and h.

[17] For a more detailed discussion of mixed funding and the conditions under which it would be permitted by the proposed amendments, *see* Release 14234 at section II.B.14.

[18] Amendments are also being proposed to the pricing provisions of the rule to accommodate the new definition. *See* discussion *supra* at Section B.3.

[19] "Option I" contracts provide a death benefit equal to the greater of (1) the face amount of the contract or (2) the cash value plus a pure risk amount. *See* Release 14234 at Section I. While there seems to be no reason why rule 6e-2 should not permit a scheduled contract with an Option I feature, comment is requested on the practical effects of the suggested change.

[20] The language of the requirement would be modified, however, so that the definition of "scheduled premium variable life insurance" contained in paragraph (c)(1) cross-references the definition of "guaranteed death benefit" instead of the paragraph's current formulation. The parenthetical "(or any greater amount)" is included in the definition of "guaranteed death benefit" in order to permit this defined term to be used in other sections of the rule in cases where the insurer elects to increase the guaranteed amount.

[21] The requirement was originally intended, in part, as one of several justifications for granting insurance companies certain relief from the voting provisions of the Act; the requirement would assure that an insurance company had a sufficient stake in the performance of the separate account to justify

Continued

2. Paragraph (c)(4)—Definition of Sales Load

The proposed amendments would, for the reasons discussed in Section B.3. above, modify paragraph (c)(4)(ii) of the existing rule, which relates to the cost of insurance charge, to specify use of either the 1958 or the 1980 CSO Table, depending on which table is used in the design of the contract.[22] In addition, whereas paragraph (c)(4) presently specifies *when* sales load may be deducted, in the context of the proposed amendments (which would permit a subsequent sales load) the paragraph is intended to relate solely to *how* sales load is measured. Consequently, although sales load no longer must be deducted solely from premium payments, the total amount of permissible load, no matter when it is deducted, is measured against the total amount of payments.[23]

3. Paragraphs (c)(8) and (c)(9)—Definitions of Cash Value and Cash Surrender Value

The proposed amendments would define two terms, "cash value" and "cash surrender value", relevant to scheduled contracts subject to a deferred sales load. Cash value would be defined generally as the amount available in cash upon a voluntary termination of a contract, without regard to any charges deducted at that time. Cash surrender value would be defined essentially as the cash value of the contract, less any deferred sales load or other charges deducted upon redemption.[24]

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its ability to veto the vote of the account's directors or contractowners. *See, e.g.*, paragraphs (b)(5)(ii) and (b)(7)(ii). The requirement is not, however, included as part of the definition of "flexible premium variable life insurance" in rule 6e-3(T) because it would arguably be inconsistent with the nature of the product. *See* Release 14234 at section II.C.1.

[22] As discussed in Release 14234 at section II.C.8., the Commission, in specifying use of the 1980 CSO Table for certain limited purposes in the rule, is not attempting to require life insurers to use that table for insurance-related purposes relating to scheduled contracts, such as calculating the cost of insurance or valuing reserves.

[23] *See* paragraph (b)(13)(i). In addition, the investment return assumed for calculation of dividend payments deducted from the separate account would be increased from 4% to 5% to reflect higher prevailing interest rates and to conform to the assumption specified by rule 6e-3(T). *See* Release 14234 at note 69.

[24] *See* Release 14234 at sections II.C.10. and 11.

Text of Amended Rule 6e-2

PART 270—[AMENDED]

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

1. By revising § 270.6e-2 to read as follows:

§ 270.6e-2 Exemptions for scheduled premium variable life insurance separate accounts.

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this Rule, comply with all provisions of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and rules under it that apply to a registered investment company issuing periodic payment plan certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act [15 U.S.C. 80a-2(37)] and is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with Rule 7d-1 [17 CFR 270.7d-1] under the Act (the "life insurer");

(2) The assets of the separate account are derived solely from (i) the sale of scheduled premium variable life insurance contracts ("scheduled contracts") as defined in paragraph (c)(1) of this Rule, (ii) the sale of flexible premium variable life insurance contracts ("flexible contracts") as defined in paragraph (c)(1) of Rule 6e-3(T) [17 CFR 270.6e-3(T)] under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the life insurer in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].

(b) A separate account that meets the requirements of paragraph (a) of this Rule, and its investment adviser, principal underwriter and depositor shall be exempt with respect to scheduled contracts funded by the separate account from the following provisions of the Act:

(1) Section 2(a)(35) [15 U.S.C. 80a-2(a)(35)], *Provided, however,* That the term "sales load," as used in the Act and rules under it, shall have the meaning set forth in paragraph (c)(4) of this Rule. *And provided further,* That in connection with any sales load deducted other than from payments, the separate account and other persons shall be exempt from sections 2(a)(32) [15 U.S.C. 80a-2(a)(32)], 12(b) [15 U.S.C. 80a-12(b)], 22(c) [15 U.S.C. 80a-2(c)], 26(a) [15 U.S.C. 80a-26(a)], 27(c)(1) [15 U.S.C. 80a-27(c)(1)], and 27(d) [15 U.S.C. 80a-27(d)], and Rules 12b-1 [17 CFR 270.12b-1] and 22c-1 [17 CFR 270.22c-1].

(2) Section 7 [15 U.S.C. 80a-7].

(3) Section 8 [15 U.S.C. 80a-8], to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account shall file with the Commission a notification on Form N-6EI-1 [17 CFR 274.301] which identifies the separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N-6EI-1, *Provided, however,* That if the fiscal year of the separate account ends within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 [15 U.S.C. 80a-9], to the extent that:

(i) The eligibility restrictions of section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates and who do not participate directly in the management or administration of the separate account or in the sale of scheduled contracts; and

(ii) A life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser, depositor of or principal underwriter for the separate account only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of scheduled contracts.

(5) Section 13(a) [15 U.S.C. 80a-13(a)], to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by its contract holders or the board of directors may be disapproved by the life insurer, if the disapproval is reasonable and is based on a good faith determination by the life insurer that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques used by other separate accounts of the life insurer or of an affiliated life insurance company with similar investment objectives;

(iii) Any action described in paragraph (b)(5)(i) or (ii) of this Rule and the reasons therefor shall be disclosed in the proxy statement for the next meeting of contractholders.

(6) Section 14(a) [15 U.S.C. 80a–14(a)], *Provided,* That until the separate account has total assets of at least $100,000, the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement for scheduled contracts filed under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (the "1933 Act").

(7)(i) Section 15(a) [15 U.S.C. 80a–15(a)], to the extent it requires that the initial written contract with the investment adviser shall have been approved by the vote of a majority of the outstanding voting securities of the registered investment company, *Provided,* That:

(a) The investment adviser is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for scheduled contracts, and that the terms of the contract are fully disclosed in the registration statement, and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting;

(ii) Sections 15(a), (b) and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable and is based on a good faith determination by the life insurer that:

(*1*) The proposed investment advisory fee will exceed the maximum rate specified in any scheduled contract that may be charged against the assets of the separate account for such services; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques used by the current investment adviser to the separate account, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts with similar objectives of the life insurer or of an affiliated life insurance company;

(D) Any action described in paragraph (b)(7)(ii)(A), (B) or (C) of this Rule and the reasons for it shall be disclosed in the proxy statement for the next meeting of contractholders.

(8) Section 16(a) [15 U.S.C. 80a–16(a)], to the extent that:

(i) Directors of the separate account serving before the first meeting of the account's contractholders are exempt from the requirement of Section 16(a) that they be elected by the holders of outstanding voting securities of the account at an annual or special meeting called for that purpose, *Provided,* That:

(A) Such persons were appointed directors of the account by the life insurer before the effective date of the 1933 Act registration statement for scheduled contracts and are identified in the registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for scheduled contracts, unless the time for holding the meeting is extended by the Commission upon written request for good cause shown;

(ii) A member of the board of directors of the separate account may be disapproved or removed by an insurance regulatory authority if the person is not eligible to be a director of the separate account under the law of the life insurer's domicile.

(9) Section 17(f) [15 U.S.C. 80a–17(f)], to the extent that the securities and similar investments of a separate account organized as a management investment company may be maintained in the custody of the life insurer or of an affiliated life insurance company, *Provided,* That:

(i) The securities and similar investments allocated to the separate account are clearly identified as owned by the account, and the securities and similar investments are kept in the vault of an insurance company which meets the qualifications in paragraph (b)(9)(ii) of this Rule, and whose safe-keeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the separate account (or on its behalf by the life insurer), accountants for the life insurer, and to no more than 20 persons authorized by a resolution of the board of directors of the separate account,

which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated life insurance company in whose vault such investments are kept (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investment in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the file insurer or affiliated life insurance company, shall sign a notation showing (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person, the name of such person. The notation shall be sent promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who is not himself permitted to have access to the securities or investments under paragraph (b)(9)(iii) of this Rule. The notation shall be on serially numbered forms and shall be kept for at least one year;

(v) The securities and similiar investments shall be verified by complete examination by an independent public accountant retained by the separate account (or on its behalf by the life insurer) at least three times each fiscal year, at least two of which shall be chosen by such accountant without prior notice to the separate account. A certificate or such accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be transmitted to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authorities under any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of Section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rater than the vault of an insurance company.

(10) Section 18(i) [15 U.S.C. 80a-18(i)], to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Scheduled contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders pursuant to paragraph (d)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100, *Provided,* That after the commencement of sales of scheduled contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held, *Provided,* That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in Section 16(c) [15 U.S.C. 80a-16(c)]) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this Rule.

(11) Section 19 [15 U.S.C. 80a-19], to the extent that the provisions of this section shall not apply to any dividend or similar distribution paid or payable under the provisions of participating scheduled contracts.

(12) Sections 22(d) [15 U.S.C. 80a-22(d)], 22(e) [15 U.S.C. 80a-22(e)], and 27(c)(1) and Rule 22c–1, to the extent:

(i) That the death benefit and cash value of each scheduled contract shall be computed no less frequently than once daily, Monday through Friday, at such specific time during the day that a majority of the board of directors of the separate account determines no less frequently than annually. The death benefit and cash value of each contract need not be determined on (A) days in which the degree of trading in the separate account's portfolio securities is such that the cash value of the contracts will not be materially affected by changes in the value of the portfolio securities, (B) days during which no payment or request for redemption is received by the separate account, or (C) customary United States business holidays as specifically disclosed in the prospectus. *However,*

(*1*) Unless required by insurance laws and regulations, the death benefit need not be calculated on any day that the investment experience of the separate account would not affect the death benefits;

(*2*) If such determination does not reduce the participation of the contract in the investment experience of the separate account, then the death benefit need not be determined more than once each contract month;

(*3*) If the net valuation premium for such contract is transferred at least annually, then the death benefit need be determined only when such net premium is transferred; and

(ii) Necessary to comply with this Rule or with insurance laws and regulations and established administrative procedures of the life insurer for issuance, transfer and redemption of scheduled contracts, including, but not limited to, premium rate structure and premium processing,

insurance underwriting standards, and the particular benefit afforded by the contract, *Provided, however,* That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contract-holders and to all other holders of contracts of the same class or series funded by the separate account, *And provided further,* That any such action shall be disclosed in the form filed by the separate account with the Commission under paragraph (b)(3)(ii) of this Rule.

(13) Section 27 [15 U.S.C. 80a-27], to the following extent:

(i) Sections 27(a)(1) [15 U.S.C. 80a-27(a)(1)], and 27(h)(1) [15 U.S.C. 80a-27(h)(1)], to the extent that the sales load, as defined in paragraph (c)(4) of this Rule, on any scheduled contract shall not exceed 9 per centum of the payments to be made thereon during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on either the 1958 or 1980 Commissioners Standard Ordinary Mortality Table, whichever relates to the insurance rates guaranteed by the contract; *Provided,* That this paragraph shall not prohibit deduction of sales load, in any manner permitted by this Rule, from payments made subsequent to the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract as measured above. If sales load is deducted other than from payments, the sum of the amount of sales load so deducted and the amount of any sales load deducted from payments shall not exceed the amount which could have been deducted under the contract solely from payments;

(ii) Section 27(a)(3) [15 U.S.C. 80a-27(a)(3)] and 27(h)(3) [15 U.S.C. 80a-27(h)(3)], *Provided,* That the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment unless an increase is caused by the grading of cash values into reserves or reductions in the annual cost of insurance; *And provided further,* That if sales load is deducted other than from payments, the proportionate amount of sales load deducted pursuant to any method permitted under this rule shall not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method unless an increase is caused by the grading of cash values into reserves, or reductions in the annual costs of insurance;

(iii) Sections 27(c)(2) [15 U.S.C. 80a-27(c)(2], 26(h)(1) [15 U.S.C. 80a-26(a)(2)], and 26(a)(2) [15 U.S.C. 80a-26(a)(2)], to the extent necessary to permit the actions described in paragraphs (A) through (F) of this section, *Provided,* That the life insurer complies with all other applicable provisions of Section 26 as if it were a trustee, depositor or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations.

(A) Payment of a fee to the life insurer, or to any affiliated person or agent of the insurer, for bookkeeping or other administrative services provided to the separate account, *Provided,* That such fee is not greater than the expenses, without profit: (*1*) Actually paid by the life insurer for the services provided and (*2*) increased by the value of any services provided directly by the life insurer, as determined in accordance with generally accepted accounting principles consistently applied. The standard set forth in this paragraph shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not exceed the cost of the services to be provided for one year; or if the fee is guaranteed not to increase for a specified period of time, the fee shall not exceed the average expected cost of the services to be provided during the period of the guarantee;

(B) The holding of the assets of the separate account by the life insurer without a trust indenture or other such instrument;

(C) When the separate account is organized as a unit investment trust, the holding of the securities of any registered management investment company which offers its shares to the separate account in uncertificated form;

(D) When the separate account is organized as a management investment company the holding of its assets in any manner permitted by paragraph (b)(9) of this Rule or by section 17(f) of any rules under it;

(E) The deduction of premium taxes imposed by any state or other governmental entity, the cost of insurance, and, if the separate account is organized as a management investment company, an investment advisory fee;

(F) The deduction of a charge for mortality, expense, and the guaranteed death benefit risks assumed by the life insurer under the scheduled contracts (collectively, a "risk charge"), *Provided,* That the registration statement under the 1933 Act for scheduled contracts includes:

(*1*) A representation that this section is being relied on;

(*2*) A representation that the level of the risk charge either is:

(*i*) Within the range of industry practice for comparable scheduled contracts, or

(*ii*) Reasonable in relation to the risks assumed by the life insurer under the contracts;

(*3*) A brief description of the methodology used to support the representation made in response to paragraph (b)(13)(iii)(F)(*2*) of this Rule and an undertaking to keep and make available to the Commission on request the documents used to support that representation;

(*4*) A representation that either:

(*i*) The proceeds from explicit sales loads will cover the expected costs of distributing the schduled contracts; or

(*ii*)(*A*) The life insurer has concluded that there is a reasonable likelihood that the distribution financing arrangement of the separate account will benefit the separate account and contractholders and will keep and make available to the Commission on request a memorandum setting forth the basis for this representation; and

(*B*)(*1*) If the separate account is organized as a management investment company, a representation that the account will have a board of directors, a majority of whom are not interested persons of the separate account, formulate and approve any plan under Rule 12b–1 to finance distribution expenses; or

(*2*) If the separate account is organized as a unit investment trust, a representation that the account will invest only in management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notwithstanding the provisions of this paragraph (b)(13)(iii)(F), no risk charge may be deducted in reliance thereupon if the registration statement or amendment thereto which initially sets forth the deduction of such charge or its increase becomes effective by lapse of time pursuant to section 8(a) of the 1933

Act or Rule 486 [17 CFR 230.486] thereunder. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract. Any separate account organized under the Act as a management investment company and deducting a risk charge pursuant to this section shall be exempt from section 12(b) and Rule 12b-1 thereunder to the extent that monies derived from the risk charge may be used to finance distribution of the scheduled contracts;

(iv) Sections 27(c)(1) and 27(d), sections 2(a)(32) and 22(c) and Rule 22c-1 thereunder, to the extent that:

(A) Such sections require that the scheduled contract be redeemable or provide for a refund in cash, *Provided,* That the contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered, *And provided further,* That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge.

(B) Subject to other provisions of this Rule, sales loads may be deducted upon redemption.

(v) Section 27(d), *Provided,* That the scheduled contract gives the holder thereof the right to:

(A) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, depending upon the period over which such contract has been retained by the contractholder, an amount which is a refund of any excess paid for sales loading prior to or in connection with the surrender: *Provided, however,* That if payments for the contract have not been duly paid on the date the request for surrender is received by the life insurer, and if the sum of the cash surrender value and the amount of any excess sales loading which would otherwise be refundable in cash were applied to provide (without sales loading) a non-forfeiture benefit in accordance with the contract, then the contractholder shall be entitled to receive in cash the present value, next computed after receipt by the life insurer of the request for surrender in proper form, of any non-forfeiture benefit then in force. The amount of sales loading to be refunded shall be equal to that part of the sales loading in excess of the sum of 30 per centum of payments for the first contract year plus 10 per centum of the payments made for the second contract year; and

(B) Convert the contract at any time during the first 24 months after issuance so long as payments are duly made to a life insurance policy on the life of the insured pursuant to a plan of insurance (other than a plan involving a scheduled contract as defined in paragraph (c)(1) of this Rule or a flexible contract as defined in paragraph (c)(1) of Rule 6e-3(T)) specified in the contract, issued by the life insurer or by an affiliated life insurance company, which provides for the same initial amount of insurance as the scheduled contract and premiums which are based on the same issue age and risk classification of the insured as the scheduled contract, which conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments and cash values under the scheduled contract and the new policy. The method of computing such adjustment shall be filed with the Commission as an exhibit to the form required under paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a scheduled contract sold subject to section 27(d) or section 27(f), or both, shall be exempt from the requirements of Rule 27d-1 [17 CFR 270.27d-1] if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) to refund charges and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d-2 [17 CFR 270.27d-2];

(vii) Section 27(e) [15 U.S.C. 80a-27(e)] and Rule 27e-1 [17 CFR 270.27e-1] thereunder, to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13) (v)(A) of this Rule, are required to provide a notice of right of surrender and refund to holders of scheduled contracts, if the life insurer or duly authorized agent provides a notice of surrender and refund rights on Form N-27I-1 [17 CFR 274.301] (or a written document containing information comparable thereto) to the holder of any scheduled contract under which a refund may be available, *Provided,* that such notice shall be sent by first class mail or personal delivery to the contractholder:

(A) Upon issuance of the scheduled contract, which notice may be sent together with the issued contract and an illustration, in a form appropriate for inclusion in the propectus for the scheduled contract, of gross annual payments, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) If the contractholder has failed to make a payment prior to the expiration of the refund right provided by paragraph (b)(13)(v)(A) of this Rule and the contract has not been reinstated within 30 days following the expiration of the grace period provided in the scheduled contract for making any payment due, *Provided, however,* That, in any event, if a payment is not made when due such notice shall be sent not less thant 15 days prior to the expiration of the refund right, which notice may be sent together with a notification that the payment is overdue or on offer to reinstate the contract;

(viii) Section 27(f) and Rule 27f-1 thereunder [17 CFR 270.27f-1], *Provided,* That:

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance, or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing or personal delivery of the notice of the right of withdrawal referred to in paragraph (b)(13) (viii)(C) of this Rule, whichever is later, and receive a refund of all payments made for such contract;

(B) A refund in accordance with paragraph (b)(13)(viii)(A) of this Rule to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other scheduled or flexible contractholders;

(C) Notice of such withdrawal right and a statement of contract fees and other charges on Form N-27I-2 [17 CFR 274.303] (or a written document containing information comparable thereto) is sent by first class mail or personal delivery to the contractholder, which notice and statement may be accompanied by the scheduled contract, and an illustration, in a form appropriate for inclusion in the prospectus for the scheduled contract, of payments, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal right

referred to in paragraph (b)(13)(viii)(C), is provided with a form of request for refund of payments made, which form shall set forth:

(*1*) Instructions as to the manner in which a refund may be obtained, including the address to which the request form should be mailed; and

(*2*) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the entire amount of payments made on the contract; and

(ix) Solely for purposes of paragraphs (b)(13)(v) and (b)(13)(viii) of this Rule, the postmark date on the envelope containing the scheduled contract shall determine whether such contract has been submitted for surrender, conversion, or withdrawal within the designated period.

(14) Section 32(a)(2) [15 U.S.C. 80a-31(a)(2)], *Provided,* That:

(i) The independent public accountant is selected before the effective date of the 1933 Act registration statement for scheduled contracts, and the identity of such accountant is disclosed in such registration statement, and

(ii) The selection of the accountant is submitted for ratification or rejection to scheduled contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for scheduled contracts unless the time for the holding of such meeting is extended by order of the Commission.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, *Provided,* That: the board of directors of each investment company, constituted with a majority of disinterested directors, will monitor such company for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the life insurer agrees that it will be responsible for reporting any potential or existing conflicts to the directors; and, if a conflict arises, the life insurer will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the scheduled or flexible contracts; Then:

(i) The eligibility restrictions of section 9(a) shall not apply to those persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in this paragraph (b)(15);

(ii) The life insurer shall be ineligible under paragraph (3) of Section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(A) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this Rule; or

(B) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of this Rule;

(iv) Any action taken in accordance with paragraph (b)(15)(iii) (A) or (B) of this Rule and the reasons therefor shall be disclosed in the next report to contractholders made under section 30(d) [15 U.S.C. 80a-29(d)] and Rule 30d-2 [17 CFR 270.30d-2];

(v) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from section 14(a), *Provided,* That until such company has total assets of at least $100,000 the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) of this Rule; and

(iv) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2), to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this Rule, *Provided,* That the company complies with the conditions set forth in those paragraphs as if it were a separate account.

(c) When used in this Rule:

(1) "Scheduled premium variable life insurance contract" means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract, so long as payments are duly made in accordance with its terms, provides for:

(i) Payments which are fixed by the life insurer as to both timing and amount;

(ii) A death benefit the amount of which may vary to reflect the investment experience of the separate account;

(iii) A cash value which varies to reflect the investment experience of the separate account; and

(iv) A guaranteed death benefit.

(2) "Incidental insurance benefits" means insurance benefits provided pursuant to the scheduled contract, other than the guaranteed and variable death benefit, which do not vary in amount or duration in accordance with the investment experience of the separate account, and include, but are not limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) "Guaranteed death benefit" is the initial stated amount of death benefit (or any greater amount) guaranteed by the life insurer to be paid pursuant to a scheduled contract in the event of the death of the insured without regard to the investment experience of the separate account, if payments are duly made, reduced by an outstanding loans or partial surrenders, but does not include any incidental insurance benefits.

(4) "Sales load" charged on any payment is the excess of the payment over the sum of the following:

(i) The amount of the cash value for the first contract year, if any, and the amount of the increase in the cash value for each subsequent contract year, that is attributable to payments made and

not attributable to investment earnings;

(ii) The cost of insurance for the period for which payment is made based on either the 1958 or 1980 Commissioners Standard Ordinary Mortality Table whichever relates to rates guaranteed by the contract and the assumed investment rate specified in the contract;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than the guaranteed death benefit;

(iv) Any administrative expenses or fees which are deducted pursuant to paragraph (b)(13)(iii)(A) of this Rule;

(v) A deduction for and approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements;

(vii) Any additional charge assessed specifically for any incidental insurance benefits;

(viii) Any additional charge, in the nature of an interest charge, assessed when payments are made more frequently than annually; and

(ix) For a participating scheduled contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a gross annual investment return for the separate account which funds such contract of 5 per centum. The deduction may be determined by either of the following methods, but the same method must be applied with respect to each payment under the contract:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the contract periods described in paragraph (b)(13)(i) of this Rule, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for the contract multiplied by the fraction of the contract year for which the payment is made; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of additional payments.

(5) "Assumed investment rate" is the rate of investment return specified in the contract which would be required to be credited to a scheduled contract, after deduction of charges for federal income taxes, investment management fees, portfolio transaction expenses and mortality, expense and death benefit guarantees, to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable pursuant to the scheduled contract if the death benefit did not vary according to the investment experience of the separate account.

(6) "Variable death benefit" is the amount of death benefit, other than incidental insurance benefits, payable under a scheduled contract which varies to reflect the investment experience of the separate account and which would be payable in the absence of the guaranteed death benefit.

(7) "Payment," as used in paragraphs (b)(13)(i), (b)(13)(ii), and (b)(13)(v)(A) of this Rule and in sections 27(a)(2) and 27(h)(2) solely with respect to scheduled contracts, means the gross premium payment made less any portion of such gross premium charged for or attributable to the items specified in paragraphs (c)(4)(vi), (c)(4)(vii), and (c)(4)(viii) of this Rule. "Payment," as used in any other section of this Rule, means the gross premiums paid or payable for the scheduled contract.

(8) "Cash value" means the amount that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding contract loan.

(9) "Cash surrender value" means the amount available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with such termination have been deducted and before deduction of any outstanding contract loan.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the amendments to rule 6e-2 proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The information collection requirement imposed by these amendments to rule 6e-2 has been approved by the Office of Management and Budget.

Statutory Authority

Proposed amendments to rule 6e-2 are issued pursuant to the provisions of sections 6(e) [15 U.S.C. 80a-6(e)] and 38(a) [15 U.S.C. 80a-37(a)] of the Act.

By the Commission.

John Wheeler,

Secretary.

March 15, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that these amendments to rule 6e-2 under the Investment Company Act of 1940, if adopted by the Commission, would not have a significant economic impact on a substantial number of "small entities," as that term has been defined under the Commission's rules. I base this certification on the ground that the rule, if amended, would not affect a substantial number of small entities. It has been the Commission's experience that no issuers of scheduled premium variable life insurance qualify as small entities for purposes of the Act, and it is my belief that these amendments would not result in smaller entities entering, or being discouraged from entering this market.

Dated: March 15, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85-6969 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 275

[Release No. IA-961; File No. S7-11-85]

Conditional Exemption To Allow Registered Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a rule under the Investment Advisers Act of 1940 to permit registered investment advisers to charge certain clients performance or incentive fees. Under the Advisers Act investment advisers subject to registration are not permitted to receive this type of compensation except under limited circumstances specified in the Act or pursuant to Commission exemptive rule or order. The conditions specified in the proposed rule include conditions developed by the Commission, in a series of individual exemptive orders which have granted relief from the prohibition against performance based compensation, to provide alternative safeguards to the statutory prohibition. If adopted, the proposed rule would

allow registered investment advisers and their clients considerably more flexibility in structuring compensation arrangements.

DATE: Comments must be received on or before May 31, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–11–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Podesta, Chief (202–272–2107), or Forrest R. Foss, Special Counsel (202–272–2097), Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is today proposing for comment Rule 205–3 under the Investment Advisers Act of 1940 ("the Advisers Act"). The proposed rule would permit a registered investment adviser to be compensated on the basis of a share of the capital gains on or capital appreciation of a client's assets. This type of compensation, which is commonly referred to as a "performance" or "incentive" fee, would be permitted if the following conditions are met: (a) The client has at least $500,000 under the adviser's management or a net worth in excess of $1,000,000; (b) the adviser's compensation is based on a formula which includes, in all cases, realized capital losses and, under certain circumstances, unrealized capital depreciation; (c) the contract provides that the cumulative losses in the client's account are taken into consideration when computing the performance fee; (d) the adviser dicloses certain information to the client and (e) the adviser reasonably believes that the contract represents an arm's-length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the risks of the performance fee contract.

The proposed rule imposes additional requirements for advisory contracts with investment companies, business development companies and certain other pooled investment vehicles defined in the rule by the term "private investment company." Generally, in order for these entities to enter into performance fee advisory contracts under the proposal, each of their equity owners must meet the proposed rule's test for account size or net worth.

The proposed rule is similar to, but more restrictive than a rule proposed in 1983 which was withdrawn in 1984.

I. Background

Section 205 of the Advisers Act prohibits an investment adviser subject to registration from entering into, extending, renewing or performing any investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client. This general prohibition against performance-based compensation does not apply to (i) advisory contracts which provide for compensation based on the total value of the client's account averaged over a definite period, or as of definite dates or taken as of a definite date; (ii) contracts with investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") provided that an appropriate fulcrum fee is used [1] (iii) advisory contracts relating to the investment of assets in excess of $1,000,000 with persons other than trusts, collective trust funds, or separate accounts referred to in section 3(c)(11) of the Investment Company Act [15 U.S.C. 80a–3(c)(11)] provided that an appropriate fulcrum fee is used; and (iv) advisory contracts involving business development companies provided the conditions set forth in Section 205(C) of the Advisers Act [15 U.S.C. 80b–5(C) are met.

The general prohibition of Section 205 against performance fees was enacted by Congress in 1940 to protect advisory clients from compensation arrangements which Congress believed might encourage advisers to take undue risks in managing clients funds in order to increase an advisory fee.[2] However, in enacting the general exemptive provision of the Advisers Act in 1970, Section 206A,[3] Congress specifically Contemplated Commission action in appropriate cases "to exempt persons * * * from the bar on performance [fees]." [4]

In June 1983,[5] the Commission proposed for comment a rule under Section 205 of the Advisers Act (hereafter the "1983 proposal"), which would have provided general exemptive relief from the prohibition against performance-based compensation provided certain conditions were met. The rationale for the proposal was that certain clients, because of their wealth and financial knowledge and experience, may not need the protections which the prohibition on performance fees is intended to provide.[6] The 1983 proposal was based on a review by the Commission of the legislative history of section 205(1), individual exemptive orders granting relief from the prohibitions of that section,[7] and the experience of other regulatory authorities in areas where performance fees are allowed.[8] The review was undertaken, in part, in response to criticism of the prohibition by the investment advisory industry and its representatives.[9]

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[1] A fulcrum fee is one in which the adviser's fee is averaged over a specified period and increases and decreases proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices.

[2] H.R. Rep. No. 2639, 76th Cong. 3d Sess. 29 (1940). Performance fees were characterized as, "heads I win, tails you lose," arrangements in which the adviser had everything to gain if successful and little, if anything to lose, if not. S. Rep. No. 1775, 76th Cong. 3d Sess. 22 (1940). *See also,* Report of the Securities and Exchange Commission on Investment Counsel, Investment Management, Investment Supervisory and Investment Advisory Services, H.R. Doc. No. 477, 76th Cong., 3d Sess. 30 (1939).

[3] Under Section 206A of the Advisers Act, the Commission is authorized, by rule or regulation, upon its own motion, or by order upon application, to exempt conditionally or unconditionally any person or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Advisers Act.

[4] S. Rep. No. 91–184, 91st Cong., 1st Sess. 46 (1969); H.R. Rep. No. 91–1382, 91st Cong., 2d Sess. 42 (1970).

[5] Investment Advisers Act Release No. 865; [48 FR 27771, June 17, 1983).

[6] The 1983 proposal set forth a two-part test to determine client eligibility to enter into a performance fee contract. The first part required that the adviser made a finding that the client or his representative was sufficiently knowledgeable about and experienced in financial and business matters to understand the merits and risks of the performance fee contract. The second part required the performance fee contract to relate to a minimum of $150,000 in assets.

[7] At the time the proposal was published, the Commission had issued nine orders for exemption from the prohibition of section 205(l). Since that time, the Commission has issued six additional orders.

[8] The 1983 release noted that "neither the federal banking laws nor the Commodities Futures Trading Act prohibit the receipt of performance-based compensation by banking institutions or commodity pool operators and commodity trading advisers subject to regulation under those laws." Investment Advisers Act Release No. 865, 48 FR 27771, 17772 (note 7).

[9] The release referred to criticism that it was unnecessary to apply the section 205(l) prohibition to advisory contracts with wealthy and

Continued

In May 1984, the Commission withdrew the 1983 proposal [10] stating that the comments received on the proposal reflected divergent views, and, in light of the comments, and upon further analysis, the Commission had decided not to provide general exemptive relief from Section 205 at that time.

Upon re-examination of the matter, the Commission has decided to again propose a general exemptive rule under section 205 of the Advisers Act. Although similar to the 1983 proposal in certain respects, new proposed rule 205–3 contains several significant differences which reflect comments made on the 1983 proposal [11] and the inclusion of two additional conditions used in individual exemptive orders granted from the Section 205(l) prohibition.[12] Also the new proposal replaces the "knowledge and experience" test of the 1983 proposal with other conditions designed to ensure that the rule is limited to clients who are able to fend for themselves in negotiating their advisory contracts.

The conditions of the proposed rule have been designed in light of the specific provisions of Section 205 of the Act and Congressional intent with regard to the limitations on performance fees. Although some commentators suggested that only an objective test of financial means be used, the Commission continues to believe, as it stated in the 1983 proposal:

> Section 205 currently contains a specific, limited exception from the general prohibition against performance fees for accounts of more than $1,000,000 only if the account provides for a fulcrum fee. It would be difficult to predicate a broader exemption exclusively on a means test, other than one that, perhaps, set a minimum account size that was substantially higher than $1,000,000.[13]

The specific provisions of the proposed rule are discussed in detail below.

II. General Provisions of the Rule

A. Exemption

Paragraph (a) of the proposal would provide relief from the general prohibition of Section 205(1) of the Advisers Act to permit a registered investment adviser to enter into, perform, renew or extend an advisory contract which provides for a performance fee provided all of the conditions of the proposal are met. Paragraph (b) of the proposed rule describes the types of clients with whom performance fees would be permitted.

B. Eligible Clients

Paragraph (b) sets forth an objective test of measuring client eligibility. In the Commission's view, an objective financial means test is necessary to ensure that clients entering into performance fee contracts are capable of bearing the risks associated with performance fees. Each of the exemptive orders granted under Section 205(1) to allow a performance fee has contained a client financial eligibility test. Commentators on the 1983 proposal generally endorsed an objective test although there was a wide range of opinion as to what the exact test should be.

The objective eligibility test of proposed paragraph (b) is divided into four parts depending on the nature of the client. The nature of these tests and the reasons for proposing the particular standards set forth in paragraph (b) are discussed below.

1. *General Rule.* Paragraph (b)(1) of the proposed rule requires that the client be a natural person or a company (with certain exclusions) which, immediately after the contract is entered into, has $500,000 under the management of the advisor or a net worth in excess of $1,000,000.

These alternative tests of assets under management and net worth reflect comments received on the 1983 proposal and standards developed in connection with individual exemptive orders. Under the 1983 proposal, a client would have been required to place at least $150,000 under the adviser's management pursuant to the performance fee contract. Although the many comments on this provision reflected a wide range of opinion, a number of commentators urged the Commission to adopt a more restrictive eligibility test by raising the account size to $500,000 or $1,000,000 or applying a similar standard based on client net worth. The exemptive orders granted by the Commission under Section 205 have required various client financial eligibility tests.[14] Based on the comments received on the 1983 proposal and a review of the individual exemptive order,[15] the Commission believes that the proposed financial test should adequately ensure that the rule would be limited to advisory contracts with clients who are capable of understanding and bearing the increased risks which may be associated with incentive fee arrangements.

It should be noted that the assets under management test relates to the total amount of assets which the client has under the adviser's management immediately after the contract is entered into and not just that portion which will be managed pursuant to an incentive fee arrangement. Additionally the net worth of a person could include assets held jointly with the person's spouse.

2. *Companies.* As noted, under paragraph (b)(1) an adviser may enter into performance fee contracts with companies as well as with natural persons. However, the proposed rule's eligibility provisions with respect to contracts with companies depend upon the nature of the company.

The term company as used in paragraph (b)(1) is defined in the proposal to have the same meaning as in section 202(a)(5) of the Advisers Act [15 U.S.C. 80b–2(a)(5)]. That section defines the term to include a corporation, a partnership, an association, a joint-stock company, a trust or any organized group

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sophisticated investors, the disincentive the prohibition may create to invest in securities, and the fact that certain investment advisers could avoid the restriction by structuring their services so as to be exempt from registration under the Advisers Act. 48 FR 27772–27773.

[10] Investment Advisers Act Release No. 911, May 2, 1984; (49 FR 19524, May 8, 1984).

[11] In response to the 1983 proposed rule. The Commission received 37 comment letters from 35 commentators. Twenty-three persons expressed support for the proposal although many recommended certain changes or modifications. A number of commentators objected to the rule as proposed or expressed significant reservations about it. The remaining commentators questioned whether any relaxation of the performance fee prohibition was necessary or appropriate or objected to the Commission's rationale for proposing the rule.

[12] The individual exemptive orders impose conditions on the receipt of performance fees which are considerably more stringent than those set forth in the 1983 proposal. See discussion, *infra.*

[13] 48 FR 27773, 27774.

[14] *See,* for example, *Jurika & Voyles* (Investment Advisers Act Release Nos. 901 and 925, March 13, 1984 and August 15, 1984, respectively) ($500,000 minimum net worth combined with $150,000 minimum investment); *Cigna Capital Advisers, Inc.* (Investment Advisers Act Release Nos. 842 and 850, March 8, 1983 and April 7, 1983, respectively) ($10,000,000 net worth, annual income in each of the two years preceding the investment in excess of $1,000,000, and minimum investment of $1,000,000).

[15] Most of the exemptive orders issued from the Section 205(1) prohibition against performance fees have contained objective eligibility standards which are at least as restrictive as the $500,000 assets under management test or $1,000,000 net worth test of the proposal. Many of these orders require both a minimum net worth *and* a minimum investment. *See,* for example, the two orders cited in note 14, *supra,* and *Presidio Management* (Investment Advisers Act Release Nos. 939 and 943; October 25, 1984 and November 27, 1984, respectively) (investors who are natural persons must be accredited investors under Regulation D; have a minimum net worth of $1,000,000; make an investment of at least $150,000; and, unless the investor has at least $1,000,000 invested with the adviser, the investor must not invest more than 33% of his invested capital); and *TCW Asset Management Company* (Investment Advisers Act Release Nos. 931 and 938; September 13, 1984 and October 10, 1984, respectively) (investors are accredited investors under Regulation D and must make a minimum investment of $2,000,000 or investors must be sophisticated individuals with a $10,000,000 net worth).

of persons, whether incorporated or not. Under paragraph (b)(2) of the proposal, performance fee advisory contracts with three types of companies would be permitted only if certain conditions set forth in paragraph (b)(2) of the proposal are met.

3. *Investment Companies and Business Development Companies.* Paragraph (b)(2) of the proposal provides that a company which is an investment company registered under the Investment Company Act or a business development company, as defined in Section 202(a)(22) of the Advisers Act [15 U.S.C. 80b–2(a)(22)], may enter into a performance fee contract only if each of the equity owners of the company is a natural person or company which, immediately after the contract is entered into, has a minimum of $500,000 in assets under the adviser's management or a net worth in excess of $1,000.000.[16]

The purpose of this paragraph is generally to provide the same degree of exemptive relief to persons which individually meet the objective eligibility criteria of paragraph (b)(1) and to registered investment companies of business development companies defined in section 202(a)(22) of the Advisers Act [15 U.S.C. 80b–2(a)(22)] which consist exclusively of such persons.[17]

4. *Private Investment Companies.* New proposed rule 205–3 would apply the same eligibility principle used in connection with registered investment companies and business development companies to certain other pooled investment vehicles. These vehicles are defined in the proposed rule by the term private investment company.

The term "private investment company" is defined in paragraph (f)(2) of the rule as a company which would be an investment company under section 3(a) of the Investment Company Act [15 U.S.C. 80a–3(a)] but for the exception provided from the definition by section 3(c)(1) of that Act [15 U.S.C. 80a–3(c)(1)]. Section 3(c)(1) of the Investment Company Act excludes from the definition of an investment company any issuer whose outstanding securities (other than short term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. Under paragraph (b)(2) of the proposal, a private investment company, like registered investment companies and business development companies, may subject its assets to a performance fee contract only if each of its equity owners has $500,000 in assets under the management of the adviser or has a net worth of $1,000,000 or more. The purpose of creating a special rule and definition for private investment companies is to ensure that an adviser does not pool small client accounts to circumvent the general objective eligibility standards of paragraph (b)(1) of the proposal. In this connection, the proposal is similar in intent to the 1983 proposal which contained a similar condition for limited partnerships.

The definition of the term "private investment company" and its effect on the eligibility provisions of the proposal may be illustrated by considering a limited partnership organized for the purpose of investing in securities. The limited partnership would be a private investment company under the proposed rule if its securities (the limited partnership interests) were beneficially owned by not more than 100 persons and it were not making and did not presently propose to make a public offering of its interests.[18] Under the proposal, it could enter into a performance fee contract with a registered adviser only if each of its equity owners (*i.e.* the limited partners)[19] satisfied the conditions of paragraph (b)(1). By way of example only, the partnership would satisfy the proposal's financial means test if the limited partners consisted of the following persons: (1) An individual with a net worth in excess of $1,000,000; (2) an individual with $500,000 under the management of the adviser even though only a portion of this amount was subject to the performance fee contract; (3) an industrial corporation with a net worth in excess of $1,000,000 (or $500,000 under the adviser's management); (4) a pension plan or eleemosynary or other entity described in Section 3(c) (10) or (11) of the Investment Company Act[20] [15 U.S.C. 80a–3(c) (10) or (11)] with a net worth in excess of $1,000,000 (or $500,000 under the adviser's management); or (5) a common trust fund described in Section 3(c)(3) of the Investment Company Act [15 U.S.C. 80a–3(c)(3)] with a net worth in excess of $1,000,000 (or $500,000 under the adviser's management). Of course, other persons not cited in this example could be eligible limited partners if they met the requirements of the proposal.[21]

[16] A question may arise as to how the proposed rule would apply to a separate account of an insurance company registered as a unit investment trust (UIT) under the Investment Company Act. In such a case, the contracts issued by the UIT will be funded by one or more underlying investment companies (the underlying funds). For certain purposes, the UIT may consider itself to be the sole shareholder of each underlying fund. However, for purposes of the proposed rule, and consistent with current staff interpretation in this area, the contract holders whose contracts are funded by the underlying funds will be deemed the equity owners of such funds. Therefore, unless all contract holders satisfied the provisions of paragraph (b)(1) of the proposal, the underlying fund could not enter into an exempted performance fee contract.

[17] As thus proposed, the exemptive relief provided by paragraph (b)(2) would go beyond that of the 1983 proposal which specifically excluded contracts with an investment company registered under the Investment Company Act or a business development company as defined in Section 202(a)(22) of the Advisers Act. In light of the specific statutory provisions of Section 205 of the Adviser's Act which address the limited circumstances under which performance-based compensation arrangements are permissible in connection with advisory contracts with these types of entities, the Commission believed it would not be appropriate to grant further generic relief for performance fee advisory contracts with investment companies and business development companies. The new proposal accepts the view of a number of commentators that a Section 205 rule should not exclude contracts with registered investment companies and business development companies if all of the equity owners of the companies meet the tests of the proposal on an individual basis.

[18] The term public offering under section 3(c)(1) of the Investment Company Act has generally the same meaning as in section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)].

[19] In many cases, the adviser seeking a performance fee may be the general partner of a limited partnership the adviser organized for investment purposes. Typically, the general partner would be an equity owner of the partnership by virtue of an investment in the limited partnership. Because the adviser's investment as general partner may be nominal and because the adviser is not a person for whom the protective conditions of the proposal are necessary, proposed paragraph (b)(2) contains a proviso to exempt the adviser from the requirement that each equity owner meet the $500,000 asset under management or $1,000,000 net worth tests.

[20] The statutory exception for fulcrum fee contracts, which predates the Employee Retirement Income Security Act of 1974 (ERISA) [29 U.S.C. 1001 *et seq*], is expressly inapplicable to tax qualified pension trusts and separate accounts decribed in section 3(c)(11) of the Investment Company Act. The great majority of pension trusts and accounts described in section 3(c)(11) of the Investment Company Act are subject to the fiduciary provisions of ERISA which provided protections for plan beneficiaries. Proposed rule 205–3 would be available for contracts with pension trusts and accounts. However, pension trusts and accounts, and their advisers, would not be relieved of any of their duties or obligations under ERISA with respect to any performance fee contract.

[21] Obviously, persons eligible as limited partners could be eligible in their individual capacities or in other capacities as well, *e.g.*, as shareholders of a corporation which corporation was a private investment company under the proposal. A question may arise as to the requirements of the proposal where a private investment company is itself the equity owner of another private investment company, registered investment company or business development company seeking to enter into a performance fee contract under the proposal. In such a case, the same rule applicable to the first level private investment company, *i.e.*, that each of its equity owners must safisfy one of the alternate tests of paragraph (b)(1) of the rule, applies to the second (and any other) level private investment

Continued

C. Contractual Provisions.

1. *Compensation Formula.* Proposed paragraphs (c)(1) and (2) require that the compensation paid to the adviser under the rule with respect to the performance of any securities over a given period be based on a certain formula. With respect to securities for which market quotations are readily available, the compensation formula must include the realized capital losses and unrealized capital depreciation of such securities over the period. With respect to securities for which market quotations are not readily available, the formula must include the realized capital losses of the securities over the period and, if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period must be included. It should be noted that proposed paragraphs (c)(1) and (2) set forth only those elements of the compensation formula which must be included in determining a performance fee under the rule. Of course, it may be appropriate to include other elements as well. In the case of securities for which market quotations are readily available, for example, the proposed rule would not prohibit a compensation formula based on the net of realized capital gains over realized capital losses plus the net of unrealized capital appreciation over unrealized capital depreciation.[22]

Proposed paragraphs (c)(1) and (2) are based primarily on the exemptive orders issued by the Commission under section 205(1).[23] Although these orders have employed a variety of means to measure an investment adviser's performance, each has included a formula for offsetting gains and losses.[24] The proposed rule incorporates this approach as an additional safeguard.

The required components of the compensation formula vary depending on whether the securities subject to the performance fee contract are securities for which market quotations are readily available or not.[25] For securities for which market quotations are readily available, the performance compensation formula must include realized losses and unrealized depreciation. Among other things, such a formula will avoid the incentive which an adviser might have under a formula which took into account only realized losses and gains to "manage the fee" by selling assets in order to realize a gain even though it may not be in the interest of the client to do so. In addition, as traditional advisory fees are often based on total assets under management a formula which gives effect to unrealized depreciation should not be burdensome for advisers choosing to enter into performance fee contracts.

Where the securities subject to the performance fee are ones for which market quotations are not readily available, the proposed rule permits the adviser and client more discretion in determining the compensation formula. Under paragraph (c)(2), unrealized depreciation need be included in the performance calculation only if unrealized appreciation is included. Because the calculation of unrealized appreciation and depreciation of securities for which market quotations are not readily available may require the use of costly valuation procedures, this additional flexibility seems appropriate.

2. *Cumulative Losses.* Paragraph (c)(3) of the proposed rule requires that any compensation paid to the adviser for a given period under the rule be based on the lesser of (i) the gains in the client's account for that period; or (ii) the cumulative gains less the cumulative losses, in the client's account for that period and all prior periods. This provision, which is derived from Section 205 exemptive orders,[26] is designed to ensure that the adviser's incentive compensation over the term of the contract will be based on the adviser's over-all performance. A principal effect of the provision is that no performance compensation will be paid to the investment adviser for a given period if, at the end of the period, the cumulative amount of losses in the client's account for the period and all prior periods exceeds the cumulative amount of gains for that period and all prior periods.

The operation of this provision is illustrated as follows. If, in the first contract year, losses in the client's account, computed in accordance with paragraph (c)(1) or (2), exceed gains by $90,000, the adviser would not receive a performance fee for that year. If in the second contract year gains in the client's account exceed losses by $100,000, the adviser's performance fee for the second year would be based only on the net $10,000 gain over the two year period.

3. *Percentage limitation.* The rule would not impose a percentage limitation on performance fees although a percentage limit of 20% appears in the statutory exemption for business development companies and in most individual exemptive orders. The Commission requests comment on whether a 20% limitation, or some other percentage limitation, would be appropriate for the types of performance fee advisory contracts covered by the rule.

D. Disclosure

Proposed paragraph (d) requires an adviser relying on the rule to disclose all material information about the performance fee arrangement include the potential conflicts of interest which a performance fee contract may create, the periods which will be used to measure investment performance, the nature and significance of any index which will be used as a comparative measure of investment performance and the reason the adviser believes the index is appropriate. Additionally, where the adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, the adviser must disclosure how the securities will be valued and the extent to which the valuation will be

company. This result is required by paragraph (b)(2) which excludes any private investment company from the companies referred to in paragraph (b)(1) of the rule unless each equity owner satisfies the eligibility standards of paragraph (b).

[22] The compensation formula in the proposed rule differs from the formula set forth in Section 205(1)(C) of the Advisers Act for advisory contracts with business development companies defined in Section 202(a)(22) of the Advisers Act [15 U.S.C. 80b-2(a)(22)]. Under that section, an adviser may receive a performance fee only if his compensation does not exceed 20% of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized captial depreciation.

[23] It is also based on the comments received on the 1983 proposal which solicited specific comment on whether an exemptive rule under section 205 should include requirements with respect to the manner in which a performance fee is calculated. Although a slight majority of those supporting the 1983 rule proposal and commenting on this issue were opposed to a specific compensation formula, a significant minority favored such an approach.

[24] *See* for example, *Bogey Enterprises, Inc.* (Investment Advisers Act Release Nos. 851 and 859, April 13, 1983 and May 11, 1983, respectively) (fee based on percentage of realized capital gains net of all realized capital losses and unrealized capital depreciation) and *Jurika and Voyles* (Investment Advisers Act Release Nos. 901 and 925 (March 13, 1984 and August 15, 1984, respectively) (fee based on percentage of all net operating income and realized and unrealized capital gains and, subject to certain conditions, net operating and realized and unrealized capital losses).

[25] Paragraph (f)(6) of the proposed rule defines the terms "securities for which market quotations are readily available" and "securities for which market quotations are not readily available" in a manner similar to that of Rule 2a-4 under the Investment Company Act of 1940. [17 CFR 270.2a-4].

[26] *See*, for example, *Shaw Management Co., Inc.* (Investment Advisers Act Release Nos. 875 and 878, July 29, 1983 and August 24, 1983, respectively); and *Maier & Siebel, Inc.* (Investment Adviser Act Release Nos. 829 and 830, October 20, 1982 and November 16, 1982, respectively).

independently determined. All of the information required by paragraph (d) must be disclosed by the adviser to his client prior to entering into the advisory contract. While the rule specifies these disclosures, it does not, of course, affect an adviser's obligations under any other provisions of the Advisers Act or other applicable law.[27]

It also should be noted that, under paragraph (d) of the proposed rule, the investment adviser may disclose the required information to either the client or the client's independent agent.

E. Arm's-length Transaction

The 1983 proposal included a financial and business knowledge test of client eligibility. The adviser was required to reasonably believe that the client, alone, or acting with a representative, had the knowledge and experience in business and financial matters to evaluate the merits and risks of a performance fee arrangement. The purpose of the test was to ensure that the rule would be limited to advisory contracts with clients capable of fending for themselves. It contemplated that these clients would be able to negotiate contract terms with the adviser which adequately protected their interests.

The proposed rule replaces the knowledge and experience standard of the 1983 proposal with a different test. In this regard, paragraph (e) of the proposed rule requires that an investment adviser seeking to enter into a performance fee contract under the rule reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties, and that the client, alone or together with the client's independent agent, understands the risks of the proposed method of compensation.

The conditions of proposed paragraph (e) are intended in part to supplement those of paragraph (d). An investment adviser is a fiduciary who the Supreme Court held owes his clients "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients."[28]

Proposed paragraph (d) specifies certain relevant disclosure required of advisers seeking to use the rule. Paragraph (e) seeks to ensure that the adviser does not enter into a performance fee contract based on boilerplate or overly complex disclosure not understood by the client and that the contract is the result of arms-length negotiations with a client who understands the risks of the arrangement.

Where the client is a company, paragraph (e) of the proposal allows the adviser to look to a specific person, or group of persons, acting on behalf of the company in making a determination of whether the company client understands the risks of the proposed arrangement.[29] This is designed to avoid problems for advisers seeking to enter into performance fee contracts with company clients.

The proposal makes clear that the person acting as a representative of a company under paragraph (e) may be affiliated with the company entering into the performance fee contract. Thus, the representative may be a director, officer, partner or employee of the company (or the trustee where the company is a trust) or any other person whom the company or trustee designates. The only requirement is that any such person satisfy the definition of a "client's independent agent" set forth in paragraph (f)(4) of the proposal.

F. Contract Extension or Renewal

As noted paragraph (a) of the proposed rule requires that a registered adviser entering into, performing, renewing or extending a performance fee contract subject to the rule satisfy all of the conditions of the proposal. It should be noted that, among other things, this provision requires that the client eligibility test of paragraph (b) and the arm's length test of paragraph (e) be met at the time the performance fee contract is renewed or extended.

G. Definitions

Proposed paragraph (f) contains definitions used in the proposal. Paragrpah (f)(1) defines the term "company", and paragraph (f)(2) defines the term "private investment company". Paragraph (f)(3) defines the term "affiliate" as the term is defined in Section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a-2(a)(3)].

Proposed paragraph (f)(4) defines the term "client's independent agent." Because of the important role this person may play in negotiating a performance fee contract, it is necessary to ensure his independence. To this end, paragraph (f)(4) of the proposal defines the term to include any person agreeing to act as the client's agent in connection with the contract, but excludes (1) the investment adviser seeking to rely on the rule, his affiliates, affiliates of his affiliates, and certain interested persons; (2) any person who receives, directly or indirectly, from the investment adviser or his affiliates any compensation in connection with the contract; and (3) any person with a material relationship between himself or his affiliates and the adviser or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years.

List of Subjects in 17 CFR Part 275

Investment Advisers, Reporting Requirements, Securities.

Text of Proposed Rule

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 is proposed to be amended by adding new § 275.205-3 as follows:

§ 275.205-3 Conditional exemption from the compensation prohibition of section 205(1) for registered investment advisers.

(a) *General.* The provisions of section 205(1) of the Act shall not prohibit any registered investment adviser from enting into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That all the conditions in this rule are satisfied.

(b) *Nature of the client.* (1) The client entering into the contract subject to this rule must be a natural person or a company, as defined in paragraphs (b)(2) and (f)(1) of this rule, whose net worth at the time the contract is entered into exceeds $1,000,000 or who immediately after entering into the contract has at least $500,000 under the management of the investment adviser. (The net worth of a natural person may include assets held jointly with such person's spouse.)

[27] Form ADV, Part II, Item 1, for example requires disclosure of information about advisory fees. If the proposal were adopted, an investment adviser relying on the rule would have to amend its most recent Form ADV in accordance with Rule 204-1(b)(1) to make the information contained therein with respect to fee arrangements accurate. *See also,* note 28 and accompanying text, *infra.*

[28] S.E.C. v. Capital Gains Research Bureau, 375 U.S. 180, 194 (1963) (quoting Prosser, Law of Torts (1955), 534-535 and 1 Harper and James, The Law of Torts (1956), 541, respectively).

[29] The person representing the company need not be a natural person. Obviously, a firm with the appropriate expertise could function in this capacity. However, in such a case, as a practical matter, the adviser would still have to determine that whichever individual or individuals were acting on behalf of the firm understood the risks of the contract.

(2) The term "Company" as used in paragraph (b)(1) does not include (i) a private investment company, as defined in paragraph (f)(2) of this rule, (ii) an investment company registered under the Investment Company Act of 1940 or (iii) a business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners (other than the investment adviser entering into a contract under the rule) of any such company is a natural person or company described in this paragraph (b).

(c) *Compensation formula.* The compensation paid to the adviser under this rule with respect to the performance of any securities over a given period shall be based on a formula which:

(1) Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of such securities over such period;

(2) includes, in the case of securities for which market quotations are not readily available, (i) the realized capital losses of such securities over such period and (ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of such securities over the period; and

(3) Provides that any compensation paid to the adviser for a given period under this rule is based on the lesser of (i) the gains (computed in accordance with paragraphs (c) (1) and (2) in the client's account for such period or (ii) the cumulative gains less the cumulative losses, (computed in accordance with paragraphs (c) (1) and (2)), in the client's account for such period and all prior periods.

(d) *Disclosure.* In addition to the requirements of Form ADV, the adviser shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract established pursuant to this rule all material information concerning the proposed advisory arrangement including, where relevant, the following:

(1) That the fee arrangement may create an incentive for the adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) That the adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) The periods which will be used to measure investment performance;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the adviser believes the index is appropriate; and

(5) Where an adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued and the extent to which the valuation will be independently determined.

(e) *Arms-Length contract.* The registered investment adviser (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph (f)(1), the person representing the company), alone or together with the client's independent agent, understands the risks of the proposed method of compensation. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person whom the company or trustee designates, but must satisfy the defintion of client's independent agent set forth in paragraph (f)(4).

(f) *Definitions.* For the purpose of this rule:

(1) The term "company" has the same meaning as in section 202(a)(5) of the Act, but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(2) The term "private investment company" means a company which would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from such definition by section 3(c)(1) of such Act.

(3) The term "affiliate" has the same meaning as in section 2(a)(3) of the Investment Company Act.

(4) The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

(i) The investment adviser acting in reliance upon this rule, an affiliate of the investment adviser, or an interested person with respect to the investment adviser as defined in paragraph (f)(5);

(ii) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliate of the investment adviser, an affiliate of an affiliate of the investment adviser or an interested person of the investment adviser (described in paragrah (f)(5)); or

(iii) A person with any material relationship between himself or his affiliates and the adviser or its affiliates that exists, or has existed at any time during the previous two years.

(5) The term "interested person" as used in paragraph (f)(4) means:

(i) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(ii) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser; or

(iii) Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment adviser.

(6) (i) The term "securities for which market quotations are readily available" in paragraph (c) has the same meaning as in Rule 2(a)(4)(a)(1) under the Investment Company Act of 1940 [17 CFR 270.2a–4(a)(1)].

(ii) The term "securities for which market quotations are not readily available" in paragraph (c) means securities not described in paragraph (f)(6)(i) of this rule.

(g) An investment adviser entering into or performing an investment advisory contract under this rule is not relieved of any obligations under section 206 of the Advisers Act or of any other applicable provisions of the federal securities laws.

(h) Nothing in this rule relieves a client's independent agent from any obligations to the client under applicable law.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding rule 205–3 proposed in this release. The Analysis notes that the proposed rule would permit registered advisers greater flexibility in structuring compensation arrangements with clients.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contracting Forrest R. Foss, Securities and Exchange Commission, Room 5134, 450 Fifth Street NW., Washington, D.C. 20549.

Statutory Authority

The Commission is proposing rule 205–3 under the authority set forth in section 206(A) and 211(a) of the

Advisers Act [15 U.S.C. 80b–6A and 15 U.S.C. 80b–11(a) respectively].

By the Commission.

John Wheeler,

Secretary.

March 15, 1985.

[FR Doc. 85–6967 Filed 3–22–85; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Parts 210, 230, 239 and 240

[Release No. 33–6570; IC–14423; S7–12–85]

Business Combination Transactions—Proposed New Registration Form for Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing for public comment proposed Form N–14 for the registration of securities issued by investment companies in business combination transactions. If adopted, the form would be available to management investment companies and business development companies and would provide a new, simpler form for registering securities issued in those types of transactions. Certain related technical amendments are also proposed to conform various provisions of Regulation S–X and the proxy rules to proposed Form N–14. A new rule also is being proposed which will permit transactions required to be filed on proposed Form N–14 to become effective automatically on the sixtieth day after the date of filing, in the case of registered open-end management investment companies.

DATE: Comments on proposed Form N–14 should be received on or before June 15, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary S. Podesta, Chief, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272–2107.

SUPPLEMENTARY INFORMATION: The Commision is publishing for public comment proposed Form N–14 for the registration of securities issued by certain investment companies in exchange offers and business combination transactions under Rule 145 (17 CFR 230.145) of the Securities Act of 1933 ("Securities Act"). If adopted, the form would replace Form S–14 for registering securities to be issued in business combination transactions. Form N–14 would serve also as the proxy or information statement required under applicable rules of the Securities Exchange Act of 1934 ("Exchange Act"). Accordingly, technical amendments to rules under Regulations 14A (17 CFR 240.14a–1 to 14a–101), and 14C (17 CFR 210.1–10 to 210.12–29) are being proposed to indicate that compliance with the disclosure requirements of Form N–14 will satisfy the requirements of those rules. A new rule also is being proposed to permit filings on Form N–14 by open-end management investment companies to become effective automatically on the sixtieth day after the date of filing. If this rule is adopted, the Commission will adopt an amendment to its Rules of Organization and Program Management (17 CFR 200.1 et seq.) delegating to the Director of the Division of Investment Management the authority to declare registration statements effective under the rule and to suspend effectiveness when necessary.

Proposed Form N–14 is designed particularly to permit open-end, management investment companies to develop a short prospectus concerning a business combination transaction and to attach to it the fund's current prospectus. In this way, the Commission believes it can simplify the registration process and improve the disclosure made to investors in investment company business combination transactions.

I. Background

Currently, investment companies proposing to engage in business combination transactions must comply with the disclosure requirements of Form S–14.[1] Form S–14 was designed to integrate the disclosure requirements of the Securities Act and of the proxy requirements of the Exchange Act. The filing of an S–14 registration statement satisfies the requirement to file a proxy statement and form of proxy or information statement, and the transmittal of that material to security holders also satisfies the prospectus delivery requirements of the Securities Act. The prospectus portion of the S–14 registration statement consists of a proxy or information statement to the extent required by section 14 of the Exchange Act and the rules thereunder. The prospectus also must contain information required by Regulation S–K (17 CFR 229.10–229.802) under the Securities Act. In addition to the financial statements ordinarily required in registration statements of registered investment companies, the pro forma financial statements required by Article 11 of Regulations S–X (17 CFR 210.11–01 et seq.) also must be furnished.

One result of the information requirements of Form S–14 is that prospectuses for investment company business combination transactions are frequently long and complex. These documents tend to be so long and complicated that many investment company investors cannot realistically be expected to read them, and many investors may not even try. The Commission previously proposed Forms S–4 and F–4 to improve the business combination prospectus for issuers other than registered investment companies.[2] Proposed Form N–14 represents a continuation of the effort to simplify and make more understandable business combination prospectuses by applying the approach to prospectus simplification used by the Commission in Form N–1A and proposed Form N–3, the registration forms for open-end management investment companies.[3] That is, Form N–14 would provide that investors in an investment company business combination transaction receive information comparable to that required by Form N–1A and proposed Form N–3 for primary offerings.[4] The

[1] Currently, an open-end management investment company may register securities offered in a transaction subject to Securities Act Rule 145 as a post-effective amendment to its Form N–1A registration statement, if the amendment contains the information required by Form S–14. *See* Securities Act Release No. 5510 (July 3, 1974) (39 FR 26719 (July 23, 1974)). If an investment company chooses to file a post-effective amendment, it may designate shares previously registered for the transaction. If proposed Form N–14 is adopted, it would become the exclusive form for registering shares to be sold in business combination transactions. Investment company registrants that have previously registered an indefinite number of shares may, however, sell those shares by means of the prospectus included in the Form N–14 registration statement. *See* General Instruction B to proposed Form N–14.

[2] *See* Securities Act Release Act Release No. 33–6534 (May 9, 1984) [49 FR 20833].

[3] Form N–3, which would be the registration form for separate accounts organized as open-end management investment companies, was proposed for public comment in Investment Company Release No. 13689 (December 23, 1983) 49 FR 614 (January 5, 1984). As discussed below, certain items of proposed Form N–14 with respect to such separate accounts refer to items of proposed Form N–3. The Commission anticipates that it will take final action on Form N–3 prior to taking final action on Form N–14.

[4] The disclosure requirements of proposed Form N–14 for business combinations by closed-end

Continued

Commission believes that investment companies and their shareholders will be better served if investment companies deliver a shorter and simpler prospectus than is currently required by Form S-14.

II. Proposed Form N-14

If adopted, Form N-14 would become the form for registering, under the Securities Act, securities to be issued in business combination transactions by management investment companies and business development companies. The form would be required for use in exchange offers and transactions of the type specified in Securities Act Rule 145 and would be the exclusive form for registering shares to be sold in those transactions. Investment company registrants that previously registered an indefinite number of shares would, however, be permitted to sell those shares using the N-14 prospectus.[5] As noted above, proposed Form N-14 also may serve as the proxy or information statement used in connection with a business combination transaction. If Regulation 14A, for example, applies to the transaction, the prospectus could be in the form of a proxy statement.

A. Structure of Proposed Form N-14

The form is divided into three parts. Part A would be the statutory prospectus and would consist primarily of information about the transaction, information about the companies and voting information. Part B would consist of additional information about the companies involved in the transaction, and historical and pro forma financial statements of the companies. The requirements for a statutory prospectus (Part A) and Statement of Additional Information (Part B) is consistent with the disclosure requirements of Form N-1A and proposed Form N-3. Part B need not be included in the prospectus (provided certain conditions are met) but must be made available to investors upon request. Part C would consist of information required to be in the registration statement but not required to be delivered to investors.

1. Information Required in the Prospectus—Part A

The prospectus would consist of a synopsis of certain information in the prospectus (item 3 of the form), information about the transaction (Item 4), information about the registrant (Item 5), information about the company being acquired (Item 6), voting information (Item 7), interest of certain persons and experts (Item 8) and re-offering information (Item 9).

The synopsis would address key features of the transaction and would briefly describe the companies involved in the transaction. Immediately following the synopsis would be a short description of risk factors of investing in the acquiring company.

Item 4 (information about the transaction) would require a brief description of the material features of the proposed transaction, including the terms of the acquisition agreement and any federal income tax consequences to security holders. Item 4 also would require a tabular presentation of existing and pro forma capitalization.[6]

Item 5 would specify information to be disclosed about the registrant. The information required is keyed to specific disclosure items in other investment company registration forms (e.g., Form N-1A for open-end management companies, or Form N-2 for closed-end management companies) so that investors in business combination transactions will receive information comparable to that received by investors in other offerings. Also, as discussed below, keying the required disclosures to specific disclosure items in other forms facilitates the use of incorporation by reference as a way to simplify preparation of the Form N-14 prospectus and reduce printing burdens on investment companies. For example, a mutual fund with an effective registration statement on Form N-1A could incorporate by reference into its Form N-14 prospectus disclosures made in its N-1A prospectus in order to satisfy the disclosure requirement of Item 5. As provided in General Instruction G to Form N-14, the N-1A prospectus so incorporated by reference would have to be delivered to shareholders with the N-14 prospectus.[7]

Item 6 requires information about the company being acquired. The required information varies somewhat depending upon whether the company being acquired is a registered investment company, an Exchange Act reporting company that is not a registered investment company or a nonreporting company. Where the acquired company is an investment company registered under the Investment Company Act of 1940 ("1940 Act") and the shareholders of the acquiring company are not required to approve the business combination transaction, this item can be satisfied by offering to provide on request the current prospectus of the acquired company. The requirements for the offer and delivery of a prospectus under this item would be those prescribed in General Instruction F for making available Part B of Form N-14.

Item 7 specifies what voting information must be disclosed if Section 14 of the Exchange Act is applicable to the proposed transaction.

Item 8 requires disclosure concerning any material interest in the proposed transaction of any affiliated person of the registrant, as well as any interests of experts, counsel for the registrant and certain other persons.

Item 9 concerns additional information required if any of the securities are to be reoffered by any person who would be deemed to be an underwriter.

2. The Statement of Additional Information—Part B

Proposed Form N-14 consists of a two-part format for disclosure to prospective investors in business combination transactions. First, the relatively short prospectus, described above, would satisfy the Securities Act prospectus delivery requirements. Second, a Statement of Additional Information would be made available to investors upon request and without charge. The two-part disclosure format in Form N-14 is derived from the two-part disclosure format of Form N-1A, the registration form for open-end management investment companies, adopted by the Commission in 1983. Proposed Form N-3, the registration statement for separate accounts organized as open-end management companies, also would use a two-part disclosure format.

The Statement of Additional Information would include, in the case of registered open-end management companies, the same information as is required, respectively, in the Statement of Additional Information filed with Form N-1A and proposed Form N-3.[8] In

management companies and small business investment companies also would provide company information comparable to that required in primary offerings by those companies.

[5] See General Instruction B of proposed Form N-14.

[6] Under proposed Form N-14, the prospectus would contain the per share table of both companies and the table of existing and pro forma capitalization while historical financial statements and pro forma combining financial statements would be required in the Statement of Additional Information. As discussed in the text below, the Commission requests specific comment on whether more of the financial information should be required in the prospectus.

[7] See discussion below under the heading "Incorporation by Reference."

[8] No specific information is required for other types of investment companies, such as closed-end funds registering on Form N-2 or small business investment companies registering on Form N-5. If the Commission develops simplified prospectuses for these types of investment companies using a

Continued

addition, the Statement of Additional Information would include financial statements and schedules of the registrant and the company to be acquired, pro forma financial statements and the audited balance sheet of the advisers of both companies.[9] One exception is provided with respect to pro forma financial statements.

The Commission's experience has been that some investment company mergers involve the acquisition of a company which is much smaller in size than the acquiring company. In these mergers, the larger company acquires a private, personal holding company or a registered investment company which has proven to be too small to operate economically. Preparation of the pro forma combined financial statements does not, in such circumstances, appear to provide significant assistance to shareholders but can add more significant costs to the companies involved and their shareholders. Accordingly, Item 14 of proposed Form N–14 would not require pro forma financial statements if the net asset value of the company being acquired does not exceed ten percent of the registrant's net asset value as of a specified date within thirty days of the filing of Form N–14. This exception is modeled after the definition of significant subsidiary in Rule 1–02 of Regulation S–X (17 CFR 210.1–02).

Because of the time constraints inherent in business combination transactions, Instruction F to proposed Form N–14 contains special provisions to assure that the Statement of Additional Information could be easily requested and would promptly be made available to investors. The Statement of Additional Information would be required to be physically included in the prospects or accompany it when given or sent to shareholders, if the N–14 prospectus is not mailed to investors at least twenty business days before the shareholder meeting. Requests for the Statement of Additional Information could be made orally or in writing, and it must be mailed to the investor within one business day of receipt of the request. First class mailing would be required. In addition, the registrant must provide any available toll-free telephone number for making requests and include a self-addressed card for requesting the Statement of Additional Information. (As discussed above, the requirements of Instruction F would also apply in those circumstances where Information about the acquired company coud be made available to investors pursuant to Item 6 of Form N–14).

The Commission requests specific comment on what financial information should be required in the prospectus. Consistent with the approach used in Form N–1A, full financial statements would not be required in the prospectus by Form N–14 as proposed. Rather, under the two-part disclosure format of proposed Form N–14, Regulation S–X financial information such as pro forma and historical financial statements about the two companies would be available to shareholders requesting it. The Commission requests specific comment on whether pro forma and historical financial statements should be required in the prospectus. Because pro forma financial statements present information about the two companies as of the same date, they permit comparison of the two funds, including a comparison of portfolio schedules. This information permits investors to assess whether the merger of two funds represents a "good fit." Historical financial information may be useful because it presents audited information about the funds over a longer period of time. The two-part format of the proposed form reflects a preliminary conclusion by the Commission to follow the approach of Form N–1A and not require full financial statements in the N–14 prospectus. This approach to financial statement differs somewhat from that of proposed Form S–4 where Regulation S–X pro forma financial statements would be required in the prospectus. The tentative determination to require most financial information in the Statement of Additional Information is conditioned on these being a delivery mechanism which is workable within the time constraints of investment company business combination transactions. In this regard, the Commission believes that the requirements of Instruction F for making information available on request should be adequate to ensure that shareholders who request additional information will be able to receive it in sufficient time to consider it in making their investment decisions.

B. Incorporation by Reference

Proposed Form N–14 would permit an investment company that has a current prospectus, meeting the requirements of section 10(a)(3) of the Securities Act or that is current in its reports pursuant to section 30(d) of the 1940 Act, to incorporate by reference its prospectus or reports (or any part of them) in the N–14 prospectus or Statement of Additional Information, in order to satisfy the disclosure required by specific items of Form N–14. The N–14 prospectus and the Statement of Additional Information must make clear what information is being incorporated by reference. The documents (e.g. the registrant's N–1A prospectus or semi-annual or annual report) containing the required information must accompany the N–14 prospectus sent to prospective or other investors. (As discussed above however, under Instruction F and item 6 of Form N–14, the registrant may incorporate by reference the Statement of Additional Information and, in certain cases, information about the acquired company without delivering these documents with the Form N–14 prospectus provided the documents are made available to shareholders in accordance with the requirements of Instruction F). Instruction G to Form N–14 would also require that incorporated documents be filed with the Commission as part of the N–14 registration statement.

III. Related Rules

A. Certain Conforming Amendments to Rules 14a–3 and 14a–6 under Regulation 14A, Rule 14c–2 and 14c–5 under Regulation 14C and Rules 3–05 under Regulation S–X

Rule 14a–3(a) (17 CFR 240.14a–3(a)) under the Exchange Act provides that no solicitation subject to the proxy rules shall be made unless each person solicited is concurrently furnished or has previously been furnished a written proxy statement containing the information specified in Schedule 14A (17 CFR 240.14a101) under that Act. The Commission is proposing to amend Rule 14a–3 to provide that material filed a Form N–14 registration statement under the Securities Act containing the information required by that form would satisfy the requirements of the rule. If proxies are not solicited in connection with an annual or other meeting of security holders, Rule 14c–2 requires that companies subject to section 12 of the Exchange Act send an information statement containing the information specified in Schedule 14C. The Commission is also proposing to amend Rule 14c–2 to add an information statement that meets the disclosure requirements of Form N–14 to the materials that will satisfy the information requirements of Rule 14c–2.

two-part format, it would expect to modify Form N–14 to reflect that two-part format for those companies.

[9] *See* item 14 which, among other things, refers to Article 3 of Regulation S–X (17 CFR 210.3 et seq). Financial statement requirements for business development companies are set forth in Rules 3–01 and 3–02 of Article 3; financial statement requirements for registered management companies are set forth in Rule 3–18 of Article 3.

In addition, the Commission proposed to amend Exchange Act Rule 14a-6(j) (17 CFR 240.14a-6(j)) to provide that material filed in a Form N-14 registration statement under the Securities Act would satisfy the filing requirements of the proxy rules under the Exchange Act. This amendment would enable registrants to avoid filing copies of the registration statement as a proxy statement and paying a proxy filing fee. Rule 14c-5 contains similar provisions applicable to information statements, and amendments are proposed in this release that will similarly conform that rule to proposed Form N-14.

Rule 3-05 of Regulation S-X (17 CFR 210.3-05) states that if securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired. The Commission proposes to amend Rule 3-05 to state that except as otherwise provided in Form N-14, a registration statement which registers securities to be offered to the security holders of the business to be acquired must include the financial statements specified in Regulation S-X.

B. Proposed Securities Act Rule 488

As noted above, the Commission also is proposing new Rule 488 under the Securities Act. The rule would permit, under certain conditions, registration statements on Form N-14 filed by open-end management investment companies to become effective automatically on the sixtieth day after the date of filing, or such earlier date as the Commission may declare the registration statement effective. In addition, the registrant could specify a later date, not later than eighty days after filing the registration statement. The Commission believes that filings on Form N-14 may be processed in much the same way as are post-effective amendments to registration statements filed on Form N-1A by open-end management companies. Generally, and with exceptions not pertinent in this context, post-effective amendments to Form N-1A become effective sixty days after the date of filing. The Commission does, however, request comment on whether there are classes of business combination transacton for which either a shorter or longer review period should be specified in Rule 488.

In order to qualify to use Rule 488, the prospectus filed as part of the registration statement must not contain disclosures relating to any other proposal to be acted on at a meeting of shareholders of either party other than proposals related to (1) an exchange offer for the securities of another person, (2) a business combination transaction under Securities Act rule 145, or (3) proposals related to the business combination transaction.

As noted above, if Rule 488 is adopted, the Commission will adopt an amendment to Rule 30-5 of its Rules of Organization and Program Management (17 CFR 200.30-5), delegating to the Director of the Division of Investment Management the authority to advance the effective date of registration statements filed pursuant to paragraph (a) of Rule 488, and, when necessary, to suspend the operation of paragraph (a) with respect to registration statements filed pursuant to that section.

List of Subjects in 17 CFR Parts 210, 230, 239, and 240

Reporting and recordkeeping requirements, Securities.

IV. Text of Proposals

It is proposed to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975.

1. By revising paragraph (b)(1) of § 210.3-05 to read as follows:

§ 210.3-05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) *Periods to be presented.* (1) Except as otherwise provided in Form N-14, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.12a-101 of this chapter) with respect to certain proxy statements or in a registration statement filed on Form S-4 or F-4(§ 239.—— or —— of this chapter) or Form N-14 (§ 239.—— of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in Rule 1-02 of Regulation S-X (§ 210.1-02 of this chapter). The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

2. By revising the Preliminary Note and Notes 1 and 2 to § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations, and acquisitions of assets.

Preliminary Note

Rule 145 (§ 230.145 of this chapter) is designed to make available the protection provided by registration under the Securities Act of 1933, as amended (Act), to persons who are offered securities in a business combination of the type described in paragraphs (a)(1), (2) and (3) of the rule. The thrust of the rule is that an "offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision, wheter to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no-sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. *See* Release No. 33-5316 (October 6, 1972) (37 FR 23631). Securities issued in transactions described in paragraph (a) of Rule 145 may be registered on Form S-14 or F-4 (§ 239.—— or —— of this chapter) or Form N-14 (§ 239.—— of this chapter) under the Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a)(9), (10), (11) and 4(2), are otherwise available are not affected by Rule 145.

Note 1. Reference is made to Rule 153a (§ 230.153a of this chapter) describing the prospectus delivery required in a transaction of the type referred to in Rule 145.

Note 2.— A reclassification of securities covered by Rule 145 would be exempt from registration pursuant to section 3(a)(9) or (11) of the Act if the conditions of either ot these sections are satisfied.

* * * * *

3. By adding § 230.488 to read as follows:

§ 230.488 Effective date of registration statements relating to securities to be issued in certain business combination transactions.

(a) A registration statement filed on

Form N–14 by a registered open-end management investment company for the purpose of registering securities to be issued in an exchange offer or other business combination transaction pursuant to Rule 145 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) shall become effective on the sixtieth day after the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the registration statement, which date shall be not later than eighty days after the date on which the registration statement if filed, unless the Commission having due regard to the public interest and the protection of investors declares such amendment effective on an earlier date, provided the following conditions are met:

(1) Any prospectus filed as a part of the registration statement does not include disclosure relating to any other proposal to be acted on at a meeting of the shareholders of either company other than proposals related to an exchange offer, a business combination transaction pursuant to Rule 145(a), or proposals related to the exchange or business combination transaction; and

(2) The registration statement recites on the facing sheet that the registrant proposes that the filing become effective pursuant to this rule.

(b) No registration statement shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of the registration statement, it should appear to the Commission that the registration statement may be incomplete or inaccurate in any material respect and the Commission furnishes to the registrant written notice that the effective date is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of the registration statement, if shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. By adding § 239.26 to read as follows:

§ 239.26 Form N–14, for the registration of securities issued in business combination transactions.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. By revising paragraph (a) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101) or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.—— or —— of this chapter) or Form N–14 (§ 239.——) and containing the information specified in such Form.

* * * * *

6. By revising paragaph (j) of § 240.14a–6 to read as follows:

§ 240.14a–6 Material required to be filed.

* * * * *

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.—— or —— of this chapter), or Form N–14 (§ 239.—— of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S–4, Form F–4 or Form N–14 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

7. By revising paragraph (a) of §240.14c–2 to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.—— or —— of this chapter) of Form N–14 (§ 239.—— of this chapter), and containing the information specified in such form, to every such security holder who is entitled to vote or give an auhorization or consent in regard to any matters to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the managment of the issuer pursuant to section 14(a) of the Act: *Provided, however,* that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

8. By revising paragraph (e) of § 240.14c–5 to read as follows:

§ 240.14c–5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.—— or —— of this chapter), or Form N–14 (§ 239.—— of this chapter), shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S–4 or F–4 or Form N–14 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

* * * * *

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Form N–14 proposed in this release. The Analysis notes that the proposed form will substantially simplify and shorten the present prospectus making it more understandable to fund investors and less burdensome on investment company registrants engaged in business combination transactions.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Mary S. Podesta, Securities

and Exchange Commission, Room 5134, 450 Fifth Street, N.W., Washington, D.C. 20549.

Statutory Authority

The Commission hereby publishes for comment proposed Form N-14, proposed Securities Act Rule 488 and proposed amendments to Rule 3-05(b), Securities Act Rule 145, and Exchange Act Rules 14a-3, 14a-6, 14c-2 and 14c-5 pursuant to sections 6, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77f, 77h, 77j, and 77s(a)) and sections 14(a), 14(c), and 23(a) of the Exchange Act (15 U.S.C. 78n(a), 78n(c) and 78w.)

By the Commission.

John Wheeler,

Secretary.

March 18, 1985.

Securities and Exchange Commission

Washington, D.C. 20549

FORM N-14

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Pre-Effective Amendment No. —— ☐
Post-Effective Amendment No. —— ☐

(Check appropriate Box or boxes)

(Exact Name of Registrant as Specified in Charter)

(Address of Principal Executive Office)

(Zip Code)

Registrant's Telephone Number, including Area Code

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Contents of Form N-14

General Instructions

A. Who May Use Form N-14

Form N-14 may be used by all management investment companies registered under the Investment Company Act of 1940 ("1940 Act") and business development companies as defined by section 2(a)(48) of the 1940 Act to register under the Securities Act of 1933 ("1933 Act" or "Securities Act") securities to be issued in (1) a transaction of the type specified in Securities Act Rule 145(a) (17 CFR 230.145(a)); (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N-14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement.

B. Registration Fee

Section 6(b) of the 1933 Act and Rule 457 (17 CFR 230.457) thereunder set forth the fee requirements under the 1933 Act. Registrants that have elected to register an indefinite number of shares are also directed to Rule 24f-2 under the 1940 Act (17 CFR 270.24f-2) for purposes of computing the filing fee.

Contemporaneous with a filing on Form N-14, an open-end management company may be offering its securities to the public by means of a current prospectus under an effective registration statement and may have filed an election, under Rule 24f-2, to register an indefinite number of those shares. The prospectus included in a registration statement filed on Form N-14 may be used, under rule 429(a) (17 CFR 230.429(a)), in connection with the securities covered by the earlier registration statement for which an indefinite number of shares have been registered pursuant to an election under Rule 24f-2 which has not been terminated. If this procedure is used, however, the facing sheet of the registration statement on Form N-14 must state that no filing fee is due because of reliance on Rule 24f-2, and the registrant must file as an exhibit to this registration statement a copy of its earlier declaration under rule 24f-2.

C. Application of Securities Act Rules

Attention is directed to the General Rules and Regulations under the 1933 Act, particularly Regulation C (17 CFR 230.400 to 230.494). That regulation contains general requirements regarding the preparation and filing of registration statements.

D. Application of Exchange Act Rules

1. If the registrant or any other person which is a party to the transaction submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and that person's submission to its security holders is subject to Regulation 14A (17 CFR 240.14a-1 to 14a.101) or 14C (14 CFR 240.14c-1 through 14c-101) under the Securities Exchange Act of 1934 ("1934 Act"), then the provisions of those regulations shall apply in all respects to the submission, except that (a) the prospectus, which may be in the form of a proxy or information statement, shall contain the information required by this form in lieu of that required by Schedule 14A (17 CFR 240.14a-101) or 14C (17 CFR 240.14C-101) of Regulation 14A or 14(C). Copies of the preliminary and definitive proxy or information statement, form of

proxy or other material filed as part of the registration statement shall be deemed filed pursuant to the requirements of those regulations. All other soliciting material shall be filed in accordance with that regulation.

2. If the proxy or information material sent to security holders is not subject to Regulation 14A or 14C, it shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto before the material is used.

E. Documents Comprising Registration Statement

A registration statement or an amendment to it filed under the 1933 Act shall consist of the facing sheet of the Form, Part A, Part B, Part C, required signatures, and all other documents which are required or which the registrant elects to file as a part of the registration statement.

F. Preparation of the Registration Statement

Instructions for completing Form N–14 are divided into three parts. Part A pertains to information that must be in the prospectus required by Section 10(a) of the Securities Act of 1933. Part B pertains to information that must be in the Statement of Additional Information. Part C pertains to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the registrant and the transaction in a way that will assist investors in making informed decisions about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, care should be taken that the information in the prospectus is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive detail may make the prospectus difficult for many investors to understand and may, therefore, detract from its usefulness. Accordingly, registrants should adhere to the following guidelines in responding to the items in Part A:

1. Responses to these items, particularly those that call for a brief description, should be as simple and direct aas possible and should include only information needed to understand the fundamental characteristics of the registrant. Brevity is particularly important in describing practices or aspects of the registrant's operations that do not differ materially from those of other investment companies.

2. Descriptions of practices that are necessitated or otherwise affected by legal requirements should generally not include detailed discussions of the law.

3. Responses to those items that use terms such as "list" or "identify" should include only a minimum explanation of the matters being listed or identified.

Part B: Statement of Additional Information

Part B of the Registration Statement consists of additional information about the registrant and the company being acquired and certain financial information that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to require in the prospectus, if the registrant complies with certain conditions.

The Statement of Additional Information need not be included in the prospectus or accompany it when sent to shareholders provided that: (1) The prospectus is sent (by first class mail or any other means designed to assure reasonably prompt delivery) or given to prospective investors at least 20 business days prior to (a) the date on which the meeting of security holders is held or (b) if no meeting is held, the earlier of the date of the vote, consent or authorization, the date the transaction is consummated or the date the securities are purchased, or (c) in the case of an exchange offer subject to the tender offer rules, the scheduled expiration date of the offer; (2) the cover page of the prospectus (or proxy statement in the case of a prospectus in the form of a proxy statement) states that the Statement of Additional Information is available upon oral or written request and without charge (if the registrant has a toll-free telephone number for use by prospective investors that number be provided); in addition, a self-addressed card for requesting the Statement of Additional Information must also accompany the prospectus, and;

(3) If a request for the Statement of Additional Information is received by the registrant, the statement must be sent within one business day of receipt of the request and must be sent by first class mail or other means designed to assure equally prompt delivery.

The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act (17 CFR 230.423). Furthermore, the Statement of Additional Information should be made available to investors as of the same time that the prospectus becomes available for purposes of Rule 430 under the 1933 Act (17 CFR 230.430).

G. Incorporation by Reference and Delivery of Prospectuses or Reports Filed With the Commission

If any party to a transaction registered on form N–14 is registered under the 1940 Act and has a current prospectus which meets the requirements of section 10(a)(3) of the 1933 Act or is current in its reports filed pursuant to section 30(d) of the 1940 Act, the registrant may, if it so elects, incorporate by reference the prospectus or reports, or any information in the prospectus or reports, which satisfies the disclosure required by Items 5, 6, and 11 through 14 of this form. If the registrant elects to incorporate information by reference into the prospectus, a copy of each document from which information is incorporated by reference must accompany the registration statement filed with the Commission and the prospectus. Notwithstanding the foregoing the registrant may, at its discretion, incorporate any or all of the Statement of Additional Information into the prospectus delivered to potential and other investors, without delivering the Statement with the prospectus, so long as the statement is available to investors as provided in General Instruction F. The registrant also may incorporate by reference into the prospectus information about the company being acquired without delivering the information with the prospectus under certain conditions pursant to item 6 of Form N–14, and in accordance with the requirements of Instruction F.

If the registrant elects to incorporate information by reference into the Statement of Additional Information, a copy of each document from which information is incorporated by reference must accompany the registration statement filed with the Commission and the Statement of Additional Information sent to shareholders.

Attention is directed to Rule 411 under the 1933 Act (17 CFR 230.411) regarding the need to clearly identify in the prospectus what information is incorporated by reference.

Part A: Information Required in the Prospectus

Item 1. Beginning of Registration Statement and Outside Front Cover Page of Prospectus

(a) The facing page of the registration statement shall contain the cross-reference sheet required by Rule 481(a) (17 CFR 230.481(a)).

(b) The outside front cover page of the prospectus shall contain the following information:

(1) The registrant's name, the address (including zip code) and telephone number (including area code) of its principal executive offices and, where applicable, its sponsor's name;

(2) An identification of the type of fund or separate account (as defined in section 2(a)(37) of the 1940 Act) or a brief description of the registrant's investment objectives;

(3) A statement summarizing the proposed transaction, naming the parties to it and giving the address (including zip code) and telephone number (including area code) of the principal executive offices of the company being acquired;

(4) A statement or statements that:

(A) The prospectus sets forth concisely the information about the registrant that a prospective investor ought to know before investing;

(B) The prospectus should be retained for future reference; and

(C) Additional information about the registrant has been filed with the Commission and is available upon request and without charge. (This statement should include instructions about how to obtain the additional information and whether any of the Statement of Additional Information has been incorporated by reference into the prospectus);

(5) The date of the prospectus and date of any Statement of Additional Information;

(6) The statement required by Securities Act Rule 481(b)(1) (17 CFR 230.481(b)(1)); and

(7) Such other information as required by rules of the Commission or of any other governmental authority having jurisdiction over the registrant or the issuance of its securities.

(c) The cover page may include other information, but that additional information must not, either by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 2. Beginning and Outside Back Cover Page of Prospectus

The following information, to the extent applicable, shall appear in the front or on the outside back cover page of the prospectus:

(a) a statement that the registrant is subject to the informational requirements of the Exchange Act and in accordance therewith files reports and other information with the Securities and Exchange Commission;

(b) a statement that proxy material, reports (and where registrant is subject to sections 14(A) and 14(C) of the Exchange Act, proxy and information statements) and other information filed by the registrant can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, stating the current address of each facility (see 17 CFR 200.11(b) and 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Branch, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, Washington, D.C., 20549 at prescribed rates; and

(c) The name of any national securities exchange on which the registant's securities are listed and a statement that reports, proxy material and other information concerning the registrant can be inspected at the exchanges;

(d) The table of contents required by Rule 481(c) (17 CFR 230.481(c)).

Item 3. Synopsis Information and Risk Factors

(a) The registrant shall include at the beginning of the prospectus a synopsis of the information contained in the prospectus. The synopsis shall be a clear and concise discussion of the key features of the transaction, of the registrant, and of the company being acquired. As to the registrant and company being acquired compare: (1) Investment objectives and policies; (2) advisory fees; (3) other significant fees; (4) distribution and purchase procedures and exchange rights; (5) redemption procedures; and (6) any other significant considerations. Highlight differences. Discuss the primary federal tax and other consequences of the proposed transaction to the security holders.

(b) Immediately after the synopsis, briefly discuss the principal risk factors of investing in the registrant. Briefly compare these risks with those associated with an investment in the company being acquired. If the registrant is a closed-end investment company, briefly describe any restrictions on the registrant's present or, if applicable, future ability to pay dividends with respect to any class of securities.

Item 4. Information About The Transaction

(a) Outline the material features of the proposed transaction, including:

(1) A brief summary of the terms of the acquisition agreement;

(2) A description of the securities to be issued;

(3) The reasons the registrant and the company being acquired are proposing the transaction.

(4) The Federal income tax consequences, if any, to the security holders of both parties including appropriate references to Internal Revenue Code sections; and

(5) A description of any material differences between the rights of security holders of the company being acquired and the rights of security holders of the registrant.

(b) Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.

Item 5. Information About the Registrant

Provide the following information about the registrant:

(a) If the registrant is an open-end management investment company, furnish the information required by Items 3, 4(a) and (b), 5, 6(a), (c), (d), (e), (f) and (g), and 7 through 9 of Form N-1A under the 1940 Act;

(b) If the registrant is a closed-end management investment company, furnish the information required by Items 3, 6 through 10, and 12 through 19 of Form N-2 under the 1940 Act;

(c) If the registrant is a separate account (as defined in section 2(a)(37) of the 1940 Act) offering variable annuity contracts which are registered under the 1940 Act, furnish the information required by Items 2, 4 (a) through (c), 5 through 14 of proposed Form N-3 under the 1940 Act as proposed in Investment Company Act Release No. 13659 dated December 23, 1983.

(d) If the registrant is a small business investment company registered under the 1940 Act, furnish the information required by items 1 through 7, 9 through 13, 15(a), 16, 19, 20, and 21 of Form N-5 under the 1940 Act.

Item 6. Information About the Company Being Acquired

Information about the company being acquired shall be provided as follows:

(a) if the company being acquired is a management investment company registered under the 1940 Act or a business development company as defined by section 2(a) (48) of the 1940 Act,

1. If the transaction will be submitted to the security holders of the registrant for approval or consent, furnish the information that would be required by items 5 and 8 of this form as if securities of the company being acquired were being registered;

2. If the transaction will not be submitted to security holders of the

registrant for approval or consent, furnish;

(i) The information that would be required by items 5 and 8 of this form as if securities of the company being acquired were being registered, or

(ii) Provided the requirements of Instruction F for making the Statement of Additional Information available on request are satisfied, include a statement that information about the company being acquired is incorporated by reference from the current prospectus of the company being acquired and is available upon request from the registrant without charge. (Provide a copy of the prospectus of the acquired company upon request in accordance with the requirements in Instruction F. If the company being acquired is registered on Form N-1A or, if it is adopted, Form N-3 under the 1940 Act, in responding to requests under this item, provide both a copy of the prospectus of the acquired company and the Statement of Additional Information with respect to that prospectus).

(b) In addition, if the company being acquired is registerd under the 1940 Act and is required to file reports under section 30 of that Act:

(1) State that reports and other information filed by the company being acquired can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Branch, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, Washington, D.C. 20549 at prescribed rates; and

(2) Name any national securities exchange on which the securities of the company being acquired are listed, and state that reports, proxy statements and other information concerning the company being acquired can be inspected at the exchange.

(c) If the company being acquired is not registered under the 1940 Act but is subject to the reporting requirements of section 13(a) or 15(d) of the 1934 Act, furnish the information that would be required by Item 17(a) of Form S-4 under the 1933 Act; and

(d) If the company being acquired is not registered under the 1940 Act and is not subject to the reporting requirements of either section 13(a) or 15(d) of the 1934 Act, furnish a brief description of: The business done by the company, including basic identifying information such as the date and form of its organization; its investment objectives and policies; and how the business is managed.

Item 7. Voting Information

(a) If proxies are to be solicited, include, where applicable, the information called for by Items 1 and 3 of Schedule 14A (17 CFR 240.14a-101) of Regulation 14A under the 1934 Act.

(b) If the transaction is an exchange offer or if proxies are not to be solicited, include, where applicable, the information called for by Items 2 and 3 of Schedule 14C (17 CFR 240.14c-101) under the 1934 Act.

(c) In addition to the information called for by paragraphs (a) and (b) above, include:

(1) The information called for by Item 2 of Schedule 14A (17 CFR 240.14a-101) and that the rule supersedes contrary provisions of state law.

Instruction: Also state that the exercise of such rights is subject to the "forward pricing" requirements of Rule 22c-1 under the 1940 Act (17 CFR 270.22c-1) and that the rule supersedes contrary provisions of state law.

(2) The information called for by Item 22 of Schedule 14A (17 CFR 240.14a-101) of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

(3) The information called for by Item 5(a) and (b) of Schedule 14A (17 CFR 240.14a-101) of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

(4) With respect to both the registrant and the company being acquired:

(i) The name and address of each person who controls either party to the transaction and explain the effect of that control on the voting rights of other security holders. As to each control person, state the percentage of the voting securities owned or any other basis of control. If the control person is a company, give the state or other sovereign power under the laws of which it is organized. List all parents of the control person.

Instruction: For purposes of subparagraph (c)(4)(i), "control" shall mean (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under section 2(a)(9) of the 1940 Act (15 U.S.C. 80a-2(a)(9)), which has become final, that control exists.

(ii) The name, address and percentage of ownership of each person who owns of record or is known by either party to the transaction to own of record or beneficially 5 percent or more of any class of either party's outstanding equity securities.

Instructions: 1. The percentages are to be calculated on the basis of the amount of securities outstanding.

2. Indicate, as far as practicable, the percentage of registrant's shares to be owned by such persons upon consummation of the proposed transaction on the basis of present holdings and commitments.

3. If to the knowledge of either party to the transaction or any principal underwriter of their securities, 5 percent of more of any class of voting securities of either party are or will be held subject to any voting trust or other similar agreement, this fact must be disclosed.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and show the respective percentage owned in each manner.

(iii) A statement of all equity securities of the registrant, owned by all officers, directors and members of the advisory board of the registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than 1 percent of the class, a statement to that effect is sufficient.

Item 8. Interest of Certain Persons and Experts

(a) Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of any affiliated person of the registrant in the proposed transaction.

Instruction: This item shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) If any expert named in the registration statement as having prepared or certified any part thereof (or named as having prepared or certified a report or valuation for use in connection with the registration statement), or counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion or at any time thereafter through the date of effectiveness of the registration statement to which such preparation, certification, or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or

indirect, in the registrant or was connected with the registrant, managing underwriter (or any principal underwriter, if there are no managing underwriters), voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Instructions: 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed $50,000. For purposes of this instruction, the term "expert" or counsel includes the firm, corporation, partnership or other entity, if any, by which the expert or counsel is employed or of which he is a member or of counsel to and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in the matter on behalf of the firm, corporation, partnership or entity.

2. Accountants providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note § 210.2-01 of Regulation S-X (17 CFR Part 210) for the Commission's requirements regarding "Qualification of Accountant" which discusses disqualifying interests.

Item 9. Additional Information Required for Reoffering by Persons Deemed To Be Underwriters

If any of the securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, furnish the following information in the prospectus, to the extent it is not already furnished therein:

(a) The name of each security holder;

(b) The nature of any position, office or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliated companies;

(c) The amount of securities owned by the selling security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by the security holder after completion of the offering; and

(d) Information about the transaction in which the securities were acquired and any material changes in the registrant's affairs after the transaction.

Part B. Information Required in a Statement of Additional Information

Item 10. Cover Page

(a) The outside cover page is required to contain the following information:

(i) The Registrant's name;

(ii) A statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read in conjunction with the prospectus; and (C) from whom a copy of the prospectus may be obtained;

(iii) The date of the prospectus to which the Statement of Additional Information relates and any other identifying information; and

(iv) The date of the Statement of Additional Information.

(b) The cover page may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 11. Table of Contents

Set forth under appropriate captions (and sub-captions) a list of the contents of the Statement of Additional Information and, where useful, provide cross-references to related disclosure in the prospectus.

Item 12. Additional Information About the Registrant

(a) If the registrant is an open-end management investment company, furnish the information required by Items 10 through 23 of Form N-1A under the 1940 Act or Items 15 through 25 of proposed Form N-3, as applicable.

(b) If the registrant is not an open-end management investment company, no specific information about the company need be included.

Item 13. Additional Information About the Company Being Acquired

If the transaction will be submitted to the security holders of the registrant for approval or consent:

(a) If the company being acquired is an open-end management investment company, furnish the information required by Items 10 through 14 and 16 through 23 of Form N-1A under the 1940 Act or Items 15 through 25 of proposed Form N-3, as applicable.

(b) If the company being acquired is not an open-end management investment company, no specific information about the company need be included.

Item 14. Financial Statements

(a) The Statement of Additional Information shall contain the financial statements and schedules of the acquiring company and the company to be acquired required by Regulation S-X (17 CFR Part 210) for the periods specified in Article 3 of Regulation S-X (17 CFR 210.3 et seq) except:

1. The following statements and schedules required by Regulation S-X may be omitted from Part B of the registration statement and included in Part C of it:

(i) The Statements of any subsidiary which is not a majority-owned subsidiary; and

(ii) The following schedules in support of the most recent balance sheet: (A) columns C and D of Schedule III (17 CFR 210.12-14); and (B) Schedule IV (17 CFR 210.12-03); and

2. The pro forma financial statements required by Rule 11-01 of Regulation S-X (17 CFR 210.11-01) need not be prepared if the net asset value of the company being acquired does not exceed ten percent of the registrant's net asset value, both of which are measured as of a specified date within thirty days prior to the date of filing of this registration statement.

(b) The Statement of Additional Information shall also contain the audited balance sheets of the investment adviser of both the registrant and the company being acquired as required by Rule 20a-2(a)(9) under the 1940 Act (17 CFR 270.20a-2(a)(9)).

Part C. Other Information

Item 15. Indemnification

State the general effect of any contract, arrangement or statute under which any director, officer, underwriter or affiliated person of the registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any director, officer, affiliated person or underwriter for its own protection.

Instruction: In responding to this item the registrant should take note of the provisions of Rules 461(c) (17 CFR 230.461) and 484 (17 CFR 230.484) under the 1933 Act and section 17(h) and (i) of the 1940 Act (15 U.S.C. 80a-17).

Item 16. Exhibits

Subject to the rules on incorporation by reference, give a list of all exhibits filed as part of the registration statement.

Exhibits:

(1) Copies of the charter as now in effect;

(2) Copies of the existing bylaws or corresponding instruments;

(3) Copies of any voting trust agreement affecting more than 5 percent of any class of equity securities of the registrant;

(4) Copies of the agreement of acquisition, reorganization, merger, liquidation and any amendments to it;

(5) Specimens or copies of each security being registered, including copies of all constituent instruments defining the rights of holders of the securities;

(6) Copies of all investment advisory contracts relating to the management of the assets of the registrant;

(7) Copies of each underwriting or distribution contract between the registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(8) Copies of all bonus, profit sharing, pension or other similar contracts or arrangements wholly or partly for the benefit of directors or offices of the registrant in their capacity as such. Furnish a reasonably detailed description or any plan that is not set forth in a formal document.

(9) Copies of all custodian agreements and depository contracts under section 17(f) of the 1940 Act (15 U.S.C. 80a-17(f)), for securities and similar investments of the registrant, including the schedule of remuneration;

(10) Copies of any plan entered into by registrant pursuant to Rule 12b-1 under the 1940 Act and any agreements with any person relating to implementation of the plan;

(11) An opinion and consent of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable;

(12) An opinion, and consent to their use, of counsel or, in lieu of an opinion, a copy of the revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to shareholders discussed in the prospectus;

(13) Copies of all material contracts not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the registration statement;

(14) Copies of any other opinions, appraisals or rulings, and consents to their use relied on the preparing of the registration statement and required by section 7 of the 1933 Act (15 U.S.C. 77g);

(15) All financial statements omitted pursuant to Item 9(a)(1);

(16) Manually signed copies of any power of attorney pursuant to which the name of any person has been signed to the registration statement, and

(17) Any additional exhibits which the registrant may wish to file.

Instruction: Subject to the rules on incorporation by reference, the exhibits shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits required above.

Item 17. Undertakings

(1) The undersigned registrant agrees: that prior to any public reoffering of the securities through the use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the reoffering prospectus will contain the information called for by the applicable registration form for reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The registrant agrees that every prospectus that is filed under paragraph (1) above will be filed as a part of an amendment to the registration statement and will not be used until the amendment is effective, and that, in determining any liability under the 1933 Act, each posteffective amendment shall be deemed to be a new registration statement for the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering of them.

Signatures

As required by the Securities Act of 1933, this registration statement has been signed on behalf of the registrant, in the City of _____ and State of _____, on the _____ day of _____ 19____

(Registrant) _____

By (Signature and Title) _____

As required by the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Consideration of Material Submitted Relating to the Status of the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM).

ACTION: Reopening of public comment period.

SUMMARY: On May 31, 1983, the Director, OSM, announced that he had reason to believe that Kansas may not be implementing, administering, maintaining or enforcing its approved program to regulate surface coal mining and reclamation operations (48 FR 24073). Following a June 16, 1983 informal conference between OSM and the Kansas Corporation Commission, Mined Land Conservation and Reclamation Board (MLCRB), the Director on November 17, 1983, gave notice that he still had reason to believe that Kansas is not adequately implementing, administering, maintaining or enforcing its approved program. By that notice, the Director scheduled a public hearing and public comment period to provide an opportunity for interested persons to express their concerns on the implementation of the Kansas program in accordance with the provisions of 30 CFR 733.12(d). The public hearing was held on December 16, 1983, in Topeka, Kansas and the public comment period ended December 30, 1983.

Additional material concerning the status of the Kansas program was submitted to OSM after the close of the public comment period on December 30, 1983. Because of this additional material and the importance of the decision to be made concerning the Kansas program, the Director provided the public with additional time to submit comments on the information provided to OSM from December 30, 1983 to April 30, 1984 (49 FR 18296). The public comment period ended on May 15, 1984.

Once again additional material concerning the status of the Kansas program has been submitted to OSM since the close of the last public comment period. Therefore, the Director is providing the public additional time to submit comments on the information provided to OSM since May 15, 1984.

DATE: Public comments not received on or before 4:00 p.m. on April 24, 1985 will

not necessarily be considered in the Director's findings on the status of the Kansas permanent regulatory program.

ADDRESSES: Written comments should be sent to: Kansas City Field Office, Office of Surface Mining, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106.

Copies of Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at:

Office of Surface Mining, Room 5124, 1100 L Street, NW., Washington, D.C. 20240; Telephone: (202) 343–4855.

Office of Surface Mining, Kansas City Field Office, Professional Building, 1103 Grand Avenue, Kansas City, Missouri; Telephone: (816) 374–5527.

Kansas Mined Land Conservation and Reclamation Board, 107 W. 11th Street, Pittsburg, Kansas 66762.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Ave., N.W., Washington, D.C. 20240; Telephone: (202) 343–4225; or

Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64102; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION: On March 11, 1983, Director, OSM notified the Governor of Kansas that he had reason to believe that the State may not be implementing, admininistering, maintaining or enforcing its approved program to regulate surface coal mining and reclamation operations (See Administrative No. KS–247). The Director cited problems in Kansas' program implementation in several areas, including permitting, inspection and enforcement, adminstrative procedures and records, civil penalty assessment and bond release. A more detailed account of the Director's concerns over the status of Kansas implementation of its program can be found in the May 31, 1983 **Federal Regulations** at 48 FR 24073.

On April 14, 1983, the Governor responded to the Director's March 11, 1983 letter by offering assurances of Kansas' intent to administer and enforce its regulatory program. (KS–258). On May 6, 1983, the Kansas Corporation Commission (KCC) requested an informal conference with OSM under the rpovisions of 30 CFR 733.12(c). (KS–250). The Director agreed to Kansas' request and subsequently held an informal conference with Kansas officials on June 16, 1983 in Pittsburg, Kansas. On May 31, 1983, the Director notified the public of the informal conference (48 FR 24073). A transcript of the informal conference has been placed in the Administrative Record (KS–254).

At the informal conference, OSM requested the KCC to provide additional information on July 30, August 30 and September 30, 1983 (KS–255, 257 and 259). A meeting was held between OSM and the State on November 10, 1983, to discuss OSM's concerns and the State's progress in resolving problems.

On November 10, 1983, the Director notified the Governor of Kansas that he still had reason to believe that the State was continuing to have problems in administering its program and that for these reasons OSM would hold a public hearing and public comment period in accordance with the procedures contained in 30 CFR 733.12(d). See KS–261. The Director's letter was followed by a **Federal Register** notice published on November 17, 1983 (48 FR 52297) and a letter from OSM to the Kansas Corporation Commission detailing the remaining areas of concern and the topics to be discused at the public hearing. See KS–262 and KS–282.

OSM held a public hearing on December 16, 1983, in Topeka, Kansas and provided the public an opportunity to comment through December 30, 1983, on the status of Kansas program implementation.

Since December 30, 1983, OSM has received additional material addressing the status of the Kansas permanent regulatory program. This material consisted of information submitted by the State, meeting notes, telephone conversation records and several documents generated by OSM. The additional documents are included in the Administrative Record as KS–267 through KS–319. Therefore, OSM reopened the comment period for an additional 15 days to allow the public sufficient time to review and comment on the above documents (49 FR 18296).

During the period between May 15, 1984 and March 25, 1985, a number of comments were received from the public. All written comments have been made a part of the Administrative Record, either by inclusion in the transcript of the public hearing, or as independent comments received by OSM on or before the close of the comment period.

Also, all documents on file in the OSM Kansas City Field Office relating to the Kansas permanent regulatory program since March 11, 1983, obtained in the ordinary course of OSM business from the public, OSM Kansas City Field Office employees, the Kansas Corporation Commission, the Mined Land Conservation and Reclamation Board, or other Government agencies, excluding internal memoranda (including telephone call notes, internal meeting notes, decision making documents, and advice of counsel) have been placed in the Administrative Record.

The documents available for review and comment begin with document KS–247. Therefore, OSM is reopening the comment period for an additional 30 days to allow the public sufficient time to review and comment on the above documents.

OSM's November 17, 1983 **Federal Register** notice stated that subsequent to the public hearing and the review of all available information including the hearing transcript and written comments, the Director would publish his findings on the status of the Kansas program, in accordance with the provisions of 30 CFR 733.12(e).

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 19, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85–6982 Filed 3–22–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–85–09]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is considering changing the regulations governing the McCormick Bridge, Mile 747.5, at Jacksonville Beach by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 9, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida. Normal office hours are 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350–4103.

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

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

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Vehicular traffic across the McCormick Bridge has increased significantly during the past two years. Weekday traffic (7 a.m. to 6 p.m.) has increased about 9 percent and weekend afternoon traffic (12 noon to 6 p.m.) has increased about 16 percent. The bridge is currently required to open or signal for passage of vessels at all hours. Bridge openings are most frequent during April, May, October, and November when vessels migrate along the Intracoastal Waterway. Vehicular traffic is heaviest during the morning and late afternoon on weekdays and during the afternoon on weekends. The proposed regulations would limit routine bridge openings to one every half-hour during those periods when peak vehicle traffic coincides with peak vessel traffic. By spacing openings at 30 minute intervals, traffic congestion caused by consecutive or back-to-back draw openings would be virtually eliminated. The frequency of scheduled openings would still provide for the reasonable needs of navigation.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows and regularly scheduled cruise vessels. Since the economic impact is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by amending § 117.261 by redesignating paragraph (a) as (a–1) and adding a new paragraph (a) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) The draw of the McCormick Bridge, mile 747.5 at Jacksonville Beach, shall open on signal except as follows:

(1) During April, May, October, and November, from 7:00 a.m. until 8:30 a.m. and 4:30 p.m. to 6:00 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour.

(2) During April, May, October, and November, from 12:00 noon until 6:00 p.m. Saturday, Sunday, and federal holidays, the draw need open only on the hour and half-hour.

(3) Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3)).

Dated: March 11, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander. Seventh Coast Guard District.

[FR Doc. 85–6985 Filed 3–22–85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AMS-FRL-2803-1]

Motor Vehicle Emission Factors

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop which the Environmental Protection Agency will hold regarding the Agency's motor vehicle emission factors and the Agency's fuel consumption model. The emission factors are used by States in preparing State Implementation Plan revisions and by others engaged in determining the air quality impact of motor vehicles. The fuel consumption model is used by EPA in determining the impact on total fuel consumed of various strategies which could become regulations. The Agency's purpose in holding this workshop is to meet with those parties potentially possessing information which would be of use in evaluating the emission factors and the fuel consumption model and to allow all interested parties to participate informally in the review of the EPA information.

DATES: The workshop is being held on Tuesday, April 16, 1985 at 9:00 a.m.

ADDRESS: The workshop will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Tom Darlington (313) 688–4473, or Lois Platte (313) 688–4306, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

SUPPLEMENTARY INFORMATION: EPA's current estimates of emission factors are contained in the computer program MOBILE3, and will also be published in a forthcoming report entitled, "Compilation of Air Pollutant Emission Factors: Mobile Sources", Vol. II, Fourth Edition. MOBILE3 was released in mid-1984, and since that time much additional in-use vehicle emission data have been collected and evaluated. EPA thinks that it would be beneficial to present some of the results of the in-use testing. Specific topics to be discussed include basic evaporative emissions of carbureted and fuel injected cars, evaporative emissions versus fuel volatility, updated trips and miles per

day used to estimate evaporative emissions in g/mi, and a summary of current in-use vehicle testing goals.

Suggestions for additional topics should be made in advance of the workshop. Because of the technical nature of the agenda, participants should be familiar with the existing emission factors and MOBILE3 to most fully contribute to the discussions.

This workshop will not discuss the programming aspects of the MOBILE3 computer program, such as its interface with other programs used in preparing emission inventories and air quality plans, and the language and equipment requirements of the program.

The workshop is intended to be a forum for exchange of information and has no direct connection to any rulemaking action. Consequently, the workshop will be very informal. There will be no opportunity for prepared statements in general, although prepared remarks will be welcome on specific issues as those are brought up for discussion. Although no public docket will be kept, written submissions are welcome at any time and may be brought to the workshop or mailed to Tom Darlington or Lois Platte, at the address set out above.

Dated: March 18, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-6962 Filed 3-22-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 51 and 52

[A-9-FRL-2804-3]

Air Quality Implementation Plans; San Joaquin Valley, CA; Compliance With the Statutory Provisions of Part D of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of additional comment period.

SUMMARY: On February 3, 1983 (48 FR 4972) the Environmental Protection Agency (EPA) published notices of proposed rulemaking regarding nonattainment areas having a conditionally approved State Implementation Plan, the conditions of which remain unfulfilled. The San Joaquin Valley portion of Kern County, California is one such area. The February 3, 1983 proposal stated that EPA intends to promulgate a finding that the Plan is inadequate, and that such finding will invoke, among other statutory consequences, a ban on major stationary source construction or modification. EPA's proposal was followed by two consecutive 45-day public comment periods.

In March, 1983 the EPA and U.S. Department of Justice executed a settlement agreement with the petitioners in *Chevron USA Inc.* v. *U.S. Environmental Protection Agency*, No. 81-7703 (9th Cir.) and *Western Oil and Gas Association, et. al.* v. *U.S. Environmental Protection Agency*, No. 81-7704 (9th Cir.). EPA therein agreed that it would provide an opportunity for notice and comment before invoking a construction ban in Kern County pursuant to the conditional approval of the Plan. Today's notice provides the opportunity for comment pursuant to the agreement, because EPA intends to invoke the construction ban for failure to meet the conditions requiring a revised control strategy demonstrating attainment of the ozone national ambient air quality standard, and a revised demonstration of reasonable further progress.

DATE: Comments may be submitted up to April 24, 1985.

ADDRESS: Comments may be sent to: Regional Administrator, ATTN: Air Management Division, Air Programs Branch, State Liaison Section, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: James C. Breitlow, State Liaison Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, (415) 974-7650.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1983 EPA published in the **Federal Register** (48 FR 4972) a notice of proposed rulemaking regarding, among other things, nonattainment area plans which had been conditionally approved but the condition(s) of approval remained unfulfilled. The San Joaquin Valley portion of Kern County, California was identified as one such area (48 FR 5006 February 3, 1983). To review all of the unfulfilled conditions, the reader should refer to EPA's August 21, 1981 conditional approval of the Plan (46 FR 42450 August 21, 1981), and to EPA's notices of December 14, 1982 (47 FR 55919 December 14, 1982) and August 24, 1983 (48 FR 38467 August 24, 1983) which revoked some of the original conditions of approval.

The February 3, 1983 notice stated that EPA intends to promulgate a finding that areas with unfulfilled conditions have failed to comply with the requirements of the Act and, therefore, the Plan is inadequate. EPA stated further that the official finding of the Plan's inadequacy will invoke certain statutory consequences, including but not limited to, a ban on major stationary source construction or modification pursuant to sections 110(a)(2)(i), 42 U.S.C. and 7410(a)(2)(i). By that notice, EPA solicited comment upon this and other facets of noncompliance with the requirements of the Act. This notice provided a 45 day comment period ending on March 21, 1983. On March 21, 1983 EPA extended the public comment period an additional 45 days to May 5, 1983 for plans proposed to be disapproved.

Two conditions are of particular importance. One requires a revised control strategy demonstrating attainment of the ozone national ambient air quality standard. The other is closely related, requiring a revised demonstration of reasonable further progress.

On March 7, 1984, EPA informed the State and Kern County that a satisfactory revised control strategy demonstrating attainment of the ozone standard must include a motor vehicle inspection and maintenance program (I/M). EPA placed a deadline of 7 months on the County to request the State to implement the I/M program (as required by State law).

The fact that the County has failed to take necessary action to implement expeditiously the required I/M portion of a revised control strategy is a significant deviation from requirements under the Clean Air Act. Consequently, EPA intends to invoke the construction ban for failure to fulfill the conditions. The ban would apply to the construction of modification of major stationary sources of hydrocarbons in the San Joaquin Valley portion of Kern County.

If imposed, the construction ban will remain in effect until EPA takes final action finding that the condition has been met or redesignates the area to attainment. See 48 FR 50686, 50694 (November 2, 1983).

In March, 1983 EPA and the U.S. Department of Justice executed an agreement for dismissal of petitions for review filed in the United States Court of Appeals for the Ninth Circuit by the Western Oil Gas Association, Chevron USA, Inc., and Getty Oil Company (Nos. 81-7703. 81-7704). In partinent part, the agreement with the petitioners stated:

> On August 21, 1981, EPA lifted the ban on construction of major new or modified sources when it conditionally approved the San Joaquin Valley Air Basin Nonattainment Area Plan for Kern County, California. 46 FR

42450–61. If EPA should decide to reimpose the ban pursuant to that conditional approval, EPA agrees that it will first provide an opportunity for notice and comment on this decision.

Solicitation of Public Comment

Although EPA's February 3, 1983 notice provided opportunity for comment on the prospective construction ban as a consequence of finding the Plan inadequate, EPA is by today's notice providing additional notice and opportunity for comment. This notice is given pursuant to the aforementioned agreement for dismissal, and applied only to the Plan for the San Joaquin Valley portion of Kern County. EPA will not invoke the construction ban due to unfullfilled conditions until the comment period provided by this notice is closed and the comments are evaluated.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: Sections 101, 107, 110, 116, 171–178, 301(a) and 316 of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416, 7501–08, 7601(a) and 7616); section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95–95, 91 Stat. 685 (August 7, 1977).

Dated January 28, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85–6955 Filed 3–22–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 86

[FRL–2803–2]

Air Pollution Control; Hearing to Consider Waivers of NO_x Standard for 1981–1984 Light Duty Diesel-Powered Vehicles; Application of Holzer's Imported Car Service, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Comments and Notice of Opportunity for Public Hearing.

SUMMARY: This notice announces that EPA has received an application from Holzer's Imported Car Service, Inc. (HICS) for waivers of the oxides of nitrogen (NO_x) emission standard applicable to light-duty diesel-powered vehicles for model years 1981, 1982, 1983 and 1984. EPA is scheduling a public hearing to consider requests for waivers of the NO_x standard by HICS and any other parties timely requesting such a waiver.

DATES: EPA has scheduled a public hearing on April 24, 1985 beginning at 9:00 a.m., to consider applications for waiver of the NO_x standard by HICS and any other parties submitting such application by April 15, 1985. Parties desiring to testify should notify the Manufacturers Operations Division, as noted below, not later than April 19, 1985. The hearing may be cancelled, however, due to lack of interest. Parties desiring to ascertain whether a hearing will be held should contact Mr. Richard Bergovoy as noted below. Interested parties should submit written comments by May 24, 1985 to ensure that the Administrator can consider these comments in deciding on the applications. If no party testifies at the hearing EPA will consider the waiver requests based on written submissions to the record.

ADDRESSES: The hearing will be held at the Manufacturers Operations Division Conference Room, 499 South Capitol Street, SW., 2nd floor, Washington, DC. Parties planning to testify at the hearing should notify Mr. Richard Bergovoy as noted below. Manufacturers submitting applications, or parties submitting written comments, should direct their submissions to the Director, Manufacturers Operations Division (EN–340–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All public portions of applications and other relevant information will be available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at U.S. Environmental Protection Agency, Central Docket Section (A–130), Gallery I, Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Docket No. EN–85–01).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bergovoy, Attorney/Advisor, Manufacturers Operations Division (EN–340–F) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–2522).

SUPPLEMENTARY INFORMATION:

I. Background

Section 202(b)(6)B) of the Clean Air Act (Act), 42 U.S.C. 7521(b)(6)(B) (1977), allows any manufacturer to petition the Administrator of EPA for waiver of the 1981–1984 model year NO_x standard of 1.0 gram per vehicle mile (g/mi). The Administrator, after notice and opportunity for public hearing, may waive the standard for any class or category of light-duty vehicles manufactured during the four model year period, beginning in model year 1981, up to a maximum level of 1.5 g/mi, if the manufacturer can show that the waiver is necessary to permit diesel engine technology to be used on the subject vehicles.

The waiver may be granted if the Administrator determines:

(i) That the waiver will not endanger public health;

(ii) That the waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act; and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

EPA published guidelines for diesel NO_x waiver applications in the **Federal Register** at 43 FR 30341 (July 14, 1978), in order to apprise manufacturers of the information then deemed necessary to demonstrate that a waiver should be granted. EPA subsequently published a notice in the **Federal Register** at 46 FR 20705 (April 7, 1981), also announcing procedures for submitting NO_x waiver applications covering model years 1981–1984.

EPA has received an application from HICS for waiver of the NO_x standard for its modified versions versions of the European Mercedes-Benz 240D and 300D vehicles for model years 1981, 1982, 1983 and 1984. Commercial importers for resale, such as HICS, have requested and received clarification that they are manufacturers under section 216(1) of the Act, 42 U.S.C. 7550(1) (1977), and hence, may be eligible for a NO_x waiver.

II. Hearing Procedures

The hearing will provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the waiver request at issue. Any party desiring to make an oral statement at the hearing should notify Richard Bergovoy of EPA's Manufacturers Operations Division as listed above no later than April 19, 1985. The procedures for the hearing will be the same as those EPA has employed in previous diesel NO_x waiver hearings.[1]

Presentations by the participants at the hearing and interested parties who make written submissions or file applications should address the considerations listed in previous NO_x waiver hearing notices [2] and in the

[1] *See* 45 FR 27788 (April 24, 1980).

[2] *See, e.g.*, 45 FR 73790 (November 6, 1980).

Federal Register notice that announced consolidated proceedings to consider NO_x waiver applications for the 1981–1984 model years.[3]

Additionally, the Agency requests comments on whether a manufacturer may obtain a NO_x waiver under section 202(b)(6)(B) of the Act for vehicles modified and tested under 40 CFR 85.1501 *et seq.*, in addition to vehicles covered by a certificate of conformity under section 206(a) of the Act.

Interested parties should submit written information to the record by May 24, 1985, to ensure its consideration by the Administrator in formulating waiver decisions. At the hearing, the Agency will make a verbatim record of any testimony. The Administrator will base determinations with regard to manufacturers' waiver requests on the record of the public hearing and on any other relevant written materials. This information will be available for public inspection at the EPA Central Docket, No. EN–85–01. Interested parties may obtain copies of documents in the public docket was provided in 40 CFR Part 2.

Dated: March 18, 1985.

Charles Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–6963 Filed 3–22–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 264

[SW–1–FRL–2804–1]

Hazardous Waste Management; Preparation of Permits for Hazardous Waste Land Treatment, Storage, and Disposal Facilities; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of guidance manual and request for comments; correction.

SUMMARY: This notice corrects a telephone number cited in the **Federal Register** of Thursday, February 7, 1985, on page 5268.

FOR FURTHER INFORMATION CONTACT: Glen Galen, Office of Solid Waste (WH–565E), U.S. EPA, 401 M Street SW., Washington, D.C. 20460, (202) 382–4678.

SUPPLEMENTARY INFORMATION: The following change reflects the correction in the toll-free telephone number of the RCRA Hotline that can be used to obtain copies of the draft guidance manual entitled *Permit Writers' Guidance Manual for Locations of Hazardous Waste Land Storage and Disposal Facilities—Phase 1: Criteria for Location Acceptability and Existing Applicable Regulations.*

The correct toll-free telephone number for the RCRA Hotline is: (800) 424–9346.

Dated: March 12, 1985.

Jack McGraw,

Acting Assistant Administrator, Solid Waste and Emergency Response.

[FR Doc. 85–6956 Filed 3–22–85; 8:45 am]

BILLING CODE 6560–50–M

[3] 46 FR 20705 (April 7, 1981).

LEGAL SERVICES CORPORATION

45 CFR Part 1622

Public Access to Meetings Under the Government in the Sunshine Act

AGENCY: Legal Services Corporation.

ACTION: Proposed rule; amendment.

SUMMARY: On January 4, 1985, the Legal Services Corporation republished Part 1622 of its regulations for public comment. Based upon comments received and recommendations of the Board's Operations and Regulations Committee, the Board of Directors on March 8, 1985, voted to amend Part 1622 which covers public access to meetings under the Government in the Sunshine Act. The amendments to the proposed regulation are being published for further public comment. Four amendments are proposed. Of these amendments only one, a revision of emergency proceedings section, made a major, substantive change. The other three amendments are of a technical nature. The minor amendments provide for sending notice of meetings to program directors, deletion of the word "all" from the first sentence of paragraph (b) of § 1622.6, and reference to specific exemptions and a statement of reasons why specific discussions closed to public observation come within the cited exemption.

DATES: Comments must be received on or before April 24, 1985.

ADDRESS: Comments should be submitted to Office of General Counsel, Legal Services Corporation, 7733 15th Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272–4020.

SUPPLEMENTARY INFORMATION: On January 4, 1985, the Legal Services Corporation republished Part 1622 of its regulations for public comment (50 FR 514). Comments were received and considered. On March 8, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, voted to amend Part 1622 of the Regulations. Because substantive changes were made, the amendments to the proposed regulation are being published for further comment. The specific proposed amendments are discussed on a section-by-section basis below.

Section 1622.3 Open Meetings. The proposed amendment effects paragraph (c) of § 1622.3. The words "and the program director" are to be inserted after the words "governing body" in the two places these words appear in paragraph (c). This addition reflects the Corporation's present practice and is in response to comments received that expressed concern that unless notice was provided to the programs, the programs would not receive timely notice of meetings. This amendment ensures that timely notice is sent to programs.

Section 1622.6 Procedure for Closing Discussion or Withholding Information. In paragraph (b) of § 1622.6 the word "all" has been removed after the words "A separate vote of". The deletion of the word "all" in this paragraph does not change the requirement that action closing a meeting or withholding information requires a recorded vote of a majority of all of the Directors of the Corporation. Here, the word "all" is removed to avoid a misinterpretation that a vote to close a meeting or withhold information may be defeated if one Director is unable to participate in the vote. Such an interpretation could result in an absurdity. However, it does not relieve the Board of the responsibility of seeking the vote of every Director on the question.

In paragraph (e)(2) of § 1622.6, the words "together with" following the words "or series of meetings," has been replaced with the words "with reference to the specific exemption listed in § 1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and".

This change clarifies what information must be included in the full written explanation of the action closing the meeting. However, the new language does not add any additional requirement. The existing language is from the Government in the Sunshine Act. The history of the Government in the Sunshine Act indicates that the written explanation requires references to specific exemptions, including a statement of reasons why the specific discussion comes within the cited exemption. Therefore, the change merely clarifies that which is already required.

Section 1622.9 Emergency Proceedings. This section has been completely revised. Comments received expressed the opinion the existing emergency proceedings provision violated the Government in the Sunshine Act. Many commentators stated that disruptive members of the audience should be removed. The revised section allows the Board, by recorded vote of the majority of the Directors present, to authorize the Chairman or presiding officer of the meeting to cause disruptive members of the public to be removed from the meeting. This new provision enables the Board to conduct its meeting free from disruption, yet also follows the letter and spirit of the Government in the Sunshine Act.

List of Subjects in 45 CFR Part 1622

Legal services, Sunshine Act.

PART 1622—[AMENDED]

For the reasons set out in the preamble, 45 CFR Part 1622 as published at 50 FR 514, January 4, 1985, is proposed to be amended as follows:

§ 1622.4 [Amended]

1. Paragraph (c) of § 1622.4 is amended by inserting the words "and the program director" after the words "counsel and the governing body" and after the words "meeting to the governing body".

§ 1622.6 [Amended]

2. Paragraph (b) of § 1622.6 is amended by removing the word "all" after the words "A separate vote of".

3. Paragraph (e)(2) of § 1622.6 is amended by removing the words "together with" following the words "or a series of meetings," and inserting in their place the words "with reference to the specific exemptions listed in § 1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and".

4. Section 1622.9 is revised to read as follows:

§ 1622.9 Emergency proceeding.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

(Sec. 1004(g), Pub. L. 95-222, 91 Stat. 1619 (42 U.S.C. 2996c(g))

Dated: March 19, 1985.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-6851 Filed 3-22-85; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 56, 58, 107, 108, 109, 111, and 174

[CGD 83-071a]

Mobile Offshore Drilling Unit Requirements

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits the public's comments and suggestions concerning a revision of the mobile offshore drilling unit (MODU) requirements. Since the original MODU regulations were published, new legislation and international agreements have been adopted, numerous recommendations have been received as a result of MODU casualty investigations, and various comments have been submitted by industry and other interested parties. This revision would align the regulations more closely with the International Maritime Organization (IMO) MODU Code, incorporate other applicable international agreements, implement legislation, and address problems identified by casualty investigations and public input.

DATE: Comments must be received on or before June 24, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 83-071a), U.S. Coast Guard, 2100 Second Street SW., Washington, D.C. 20593. Comments will be available for inspection or copying from 8 AM to 4 PM, Monday through Friday, except holidays, at the Office of the Marine Safety Council (G-CMC/21), Room 2110, at the address above. The telephone number is 202-426-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Anthony Dupree, Jr., Office of Merchant Marine Safety, 202-426-2307.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this preliminary rulemaking proceeding by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 83-071a), and include sufficient detail to indicate the basis on which each comment is made. All comments received will be considered before further rulemaking action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this notice are Lieutenant Commander Anthony Dupree Jr., Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Project Counsel, Office of the Chief Counsel.

Discussion

The mobile offshore drilling unit (MODU) regulations, 46 CFR Chapter I, Subchapter I-A, (Parts 107-109), have not been substantially revised since initial publication in 1978 (43 FR 56788; December 4, 1978). A modernization of the regulations is in order, due in large part to the following factors: uncorrected errors in the original regulations; six years of feedback from application of the regulations by Coast Guard marine inspectors, merchant marine technical staff engineers, and industry; increased use of classification societies and industry standards; passage of the Outer Continental Shelf Lands Act Amendments of 1978 and the 1982 Coast Guard regulations in 33 CFR Chapter I, Subchapter N, implementing the Amendments; United States acceptance of the International Convention for the Safety of Life at Sea, 1974, (SOLAS 74) and the 1978 Protocol to SOLAS 74; recommendations from the investigations of major MODU casualties; and the U.S. recognition of the International Maritime Organization (IMO) MODU Code.

In addition to making numerous editorial changes, such as correcting typographical errors and misspellings, the Coast Guard is considering possible substantive revision of sections in 46 CFR Chapter I, Subchapters F, J, I-A, and S. Some of the sections being considered for revision are:

(1) *Section 56.50-1.* Revise bilge/ballast pumping system regulations to include capability of unit to counterballast and/or dewater at excessive angles of heel or trim under emergency operating conditions. Include requirements for the safe operation of automated ballast control systems, for two independent means of taking suction on each ballast tank, for a draft indicating system, and for a readily

accessible and adequately protected central ballast control station.

(2) *Section 56.50–50.* Concerning the bilge system, evaluate common rail vs. independent branch suction for self-elevating units and modify the regulations if necessary.

(3) *Subpart 58.60.* Add a new section concerning the acceptance of portable and temporary industrial equipment. Give more specific instructions pertaining to the inspection and acceptance of industrial systems by Coast Guard inspectors. Add a new section pertaining to the installation and interconnection of industrial and shipboard systems.

(4) *Section 107.231.* Update check list for issuance of Certificates of Inspection. Add a new section stating that MODUs must be in compliance with applicable sections of 33 CFR Chapter I, Subchapter N, when operating on the U.S. Outer Continental Shelf.

(5) *Section 107.239.* Consider alternative means of testing the release hook for davit launched liferafts.

(6) *Section 107.245.* Add a new section requiring a proof test for cantilever structures, derricks, BOP cranes, and other such structures, in accordance with the applicable American Petroleum Institute (API) and classification society specifications.

(7) *Section 107.251.* Clarify the fire main testing requirement to account for MODU operations when jacked-up.

(8) *Section 107.261.* Modify to allow the Coast Guard Officer in Charge, Marine Inspection, (OCMI) to approve alternative hull exams instead of drydock.

(9) *Section 107.301.* Add a new provision on acceptance by the Coast Guard of plans approved by a classification society.

(10) *Section 107.305.* Update plan approval list. Include submission of plans on cantilevers and other major substructures.

(11) *Section 107.401.* Add a new section on how U.S.-flag vessels may obtain an IMO MODU Code Certificate.

(12) *Section 108.110.* Add a new section to require that structural materials be suitable for the intended environment.

(13) *Section 108.119.* Add a new section on requirements for portable and temporary quarters and work spaces, detailing plan review, construction standards, and materials.

(14) *Section 108.131 through 108.147.* Update existing structural fire protection requirements. Include requirements for portable and temporary quarters and work spaces.

(15) *Section 108.159.* Add a new provision specifying a rise/run standard for stair tread.

(16) *Section 108.193 through 108.215.* Allow the Officer in Charge, Marine Inspection, (OCMI) to authorize alternative accommodations arrangements, such as six man staterooms. Align the hospital space requirements closer with the requirements of 46 CFR Subchapter I, Part 92.

(17) *Section 108.235.* Require the use of steel for the construction of helicopter landing platforms.

(18) *Section 108.237.* Provide greater delineation of where and how fuel storage tanks are located. Add a provision on the use of marine portable tanks for fuel stowage. Evaluate the use of portable tanks, other than marine portable tanks, for helicopter fueling.

(19) *Section 108.407.* Add draft (air movement) requirement for electric fire detection system.

(20) *Section 108.425 through 108.477.* Reevaluate and update the standards pertaining to fire fighting systems to agree with the SOLAS 74 Amendments.

(21) *Section 108.490.* Add a new section requiring a back-up fire fighting system for the heliport.

(22) *Section 108.507.* Revise section to require materials suitable for low temperature service commensurate with the design parameters of the rig.

(23) *Section 108.525 through 108.527.* Concerning means of embarkation, develop generalized requirements to allow approval by the Officer in Charge, Marine Inspection, (OCMI) where standard means of embarkation are not available.

(24) *Section 108.529.* Add a new section developing performance standards for personnel transfer equipment, such as a standard specifying that the equipment must be capable of providing flotation for the maximum number of persons allowed and be capable of safely carrying a litter.

(25) *Section 108.705.* Revise requirements to ensure that suitable mooring equipment is provided on all types of MODUs.

(26) *Section 109.107 through 109.109.* Specify the responsibilities of master/person-in-charge.

(27) *Section 109.219.* Add phrase "at a USCG approved liferaft servicing facility" after the word "serviced."

(28) *Section 109.323.* Modify to require two USCG documented lifeboatmen per lifeboat regardless of the size of the lifeboat and one USCG documented lifeboatman per liferaft on board the unit.

(29) *Section 109.411.* Modify section to specifically require Coast Guard certificated bottom bearing MODUs operating in foreign waters to comply with the Coast Guard's casualty reporting requirements.

(30) *Section 109.501.* Correct the deficiencies in the station bill section as noted in NVIC 7–82, "Sample Format of Vessel or Facility Station Bill." Revise the requirements for units equipped with lifeboats so that individuals may be assigned seats only in the lifeboats.

(31) *Section 109.553.* Add a new section making the OCS workplace safety and health requirements in 33 CFR Part 142 applicable to MODUs no matter where the units are operating. See proposed amendments to Part 142 in CGD 79–077 (49 FR 1083; January 9, 1984).

(32) *Section 109.557 and 109.558.* Evaluate and revise the requirements for the carriage of flammable and combustible liquids in bulk. Add a new section containing requirements for the use of marine portable tanks and DOT tanks in drilling operations. Add a new section on the carriage of hazardous (non-flammable) cargoes in marine portable and DOT tanks.

(33) *Section 109.559.* Modify section to specify proper storage and handling of explosives.

(34) *Section 109.562.* Add a new section requiring that a mandatory safety briefing be given each arrival onboard a MODU. This briefing should include information on such items as the location of lifesaving gear, the identification of emergency signals, the proper donning and operation of emergency and lifesaving gear, and the location of the nearest place of refuge.

(35) *Appendix A to Part 109.* Delete Appendix A (and all references to it) as its purpose has been served.

(36) *Section 111.105.* Revise regulations to allow consideration of ventilation design techniques as a means of reducing the classification of a hazardous location.

(37) *Section 111.107.* Update and revise industrial system electrical requirements to incorporate current industry standards. Update DC drilling motor cable construction and sizing requirements.

(38) *Section 174.035.* Evaluate the need for and define "restricted service condition". Develop appropriate standards.

(39) *Section 174.040.* Add stability criteria for operating afloat in shallow water.

(40) *Section 174.045.* Clarify the use of the cosine correction for wind heel moment on drillships.

(41) *Section 174.080 and 174.085.* Add a new provision allowing controlled downflooding for optimizing maximum allowable vertical center of gravity.

In addition to the above amendments to Subchapters F, J, I–A, and S, the Coast Guard is considering requiring MODUs certificated by the Coast Guard to comply at all times, regardless of location, with requirements similar to those currently found in the Department of the Interior's OCS Orders Numbers 2 and 5 pertaining to drilling safety, hydrogen sulfide, gas detection, the use of well gas as fuel for rig equipment, and other safety systems and devices.

The Coast Guard will also conduct a review of the industrial and classification society standards currently incorporated by reference in Subchapter IA. Comments concerning these standards or concerning new or additional standards which should be considered for incorporation are solicited.

On June 1, 1984, a separate advance notice of proposed rulemaking (ANPRM) was published under Coast Guard Docket Number (CGD) 83–071 to solicit input on amending the MODU operating manual requirements in 46 CFR 109.121, 170.110, and 170.130 (49 FR 22836). While part of the overall effort to address MODU requirements, the operating manual rulemaking proceedings are being handled separately to focus specifically on that subject matter. Therefore, comments on the operating manual requirements should be submitted under CGD 83–071, rather than under this rulemaking (CGD 83–071a).

On December 31, 1984, a separate ANPRM was published under CGD 84–069 to solicit input on proposed changes to the requirements for lifesaving equipment on US. vessels (49 FR 50745). Changes to the livesaving equipment requirements for MODUs will be carried out under that rulemaking. Comments regarding proposed changes or suggestions for changes to the lifesaving requirements for MODUs should be submitted under CGD 84–069.

This advance notice is issued under the Coast Guard's policy for early public participation in rulemaking proceedings. Your comments and supporting data on the proposed revisions listed above, or on any other sections of the regulations applicable to MODUs, are solicited.

List of Subjects

46 CFR Parts 56, 58, 111, and 174

Vessels.

46 CFR Parts 107, 108, and 109

Oil and gas exploration.

Dated: March 20, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85–6984 Filed 3–22–85; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 22, 25, and 90

[Gen. Docket Nos. 84–1231, 84–1233, and 84–1234]

Frequency Allocation and Cellular Communications Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: This Order extends the time period in which to file comments and reply comments in response to the Notices of Proposed Rulemaking in General Docket Nos. 84–1231 (1/28/85; 50 FR 3809), 84–1233 (1/11/85; 50 FR 1582) and 84–1234 (2/28/85; 50 FR 8149) concerning frequency allocation and cellular communications systems. This is the second extension of time in Dockets 84–1231 and 84–1233—the first having been issued in an Order (3/6/85; 50 FR 9059) which also denied consolidation of the three dockets. A further extension of time is necessary in order that a study in Docket 84–1231 can be properly completed and evaluated.

DATES: Comments may now be filed on or before April 22, 1985. Reply comments may now be filed on or before May 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Spectrum Management Division, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20054, (202) 653–8169.

SUPPLEMENTARY INFORMATION:

Order Extending Time For Comments

In the Matter of Amendment of Parts 2 and 22 of the Commission's Rules Relative To Cellular Communications Systems; General Docket No. 84–1231, RM–4812: Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations To Allocate Frequencies in the 896–902 MHz and 935–941 MHz Bands for Private Land Mobile Use; General Docket No. 84–1233, RM–4829: Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; General Docket No. 84–1234, RM–4247.

Adopted: March 14, 1985.

Released: March 19, 1985.

By the Private Radio Bureau, Common Carrier Bureau, and Office of Science and Technology.

1. The Commission has before it two motions to further extend time in the above captioned rulemaking proceedings. On February 26, 1985, we released an *Order* (50 FR 9059) extending time to file comments and reply comments to the Notices of Proposed Rulemaking in Dockets 84–1231 and 84–1233 until the same dates as were established for the NPRM in Docket 84–1234. We also denied motons to consolidate the three proceedings in the same *Order.*

2. As modified by the *Order,* the comment date in the three proceedings is March 29, 1985, and the reply comment date is April 29, 1985. The Cellular Telecommunications Division of Telocator Network of America (Telocator) and the Cellular Communications Industry Association (CCIA) have requested an extension in Docket 84–1231 until April 20, 1985 and May 20, 1985, respectively, in order that a cellular radio study which they have commissioned can be properly completed and evaluated. The Land Mobile Communications Council (LMCC) has requested an extension in all three dockets until April 30, 1985 and May 30, 1985, respectively, citing the cellular radio study mentioned above and technical issues in the other two proceedings.

3. We believe that some additional time is warranted based on the cellular study which is in progress. Although we are reluctant to grant a further extension in any of the proceedings due to our desire to expedite the final disposition of these items, we believe it is important that interested parties have the opportunity to comment on a complete record.

4. We will, therefore, grant an extension of time in all three proceedings to the approximate dates requested by Telocator and CCIA. However, inasmuch as April 20, 1985 falls on a Saturday, we will establish the comment date as Monday, April 22, 1985, and the reply comment date as Wednesday, May 22, 1985. This will provide more than a three week extension of time for both coments and reply comments.

5. Therefore, it is ordered, That the Motions for Extension of Time are granted to the extent discussed above. Interested parties may file comments to any or all of the Notices of Proposed

Rulemaking in General Dockets 84–1231, 84–1233, and 84–1234 on or before April 22, 1985 and may file reply comments on or before May 22, 1985.

6. This action is taken pursuant to authority found in sections 4(i), 302, and 303 of the Communications Act of 1934 as amended, 47 U.S.C. sections 154(i), 302, and 303, and pursuant to §§ 0.31, 0.91, 0.131, 0.241, 0.291, 0.331, and 0.332 of the Commission's Rules.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

Albert Halprin,

Chief, Common Carrier Bureau.

Robert S. Powers,

Chief Scientist.

[FR Doc. 85–6991 Filed 3–22–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 100

[MM Docket No. 85–32]

Technical Standards for Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: Action taken herein extends the time for filing comments and replies to comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 85–32. This *Notice* requested comments on the proposed technical standards for the Direct Broadcast Satellite Service. The extension of time was requested by the Direct Broadcast Satellite Association.

DATES: Comments are due on or before July 1, 1985, and replies to comments are due on or before July 16, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rule Making was published on February 19, 1985, 50 FR 6971.

Order Extending Time for Filing Comments to Notice of Proposed Rule Making

In the matter of amendment of Subpart C of Part 100 of the Commission's Rules and Regulations with Respect to Technical Standards for Direct Broadcast Satellite Service; MM Docket No. 85–32.

Adopted: March 18, 1985.

Released: March 20, 1985:

By the Chief, Mass Media Bureau.

1. On February 6, 1985, the Commission adopted a *Notice of Proposed Rule Making* in MM Docket No. 85–32 to consider adoption of technical standards for the Direct Broadcast Satellite Service (DBS). The *Notice* was released on February 11, 1985, with comments due by March 20, 1985, and reply comments due by April 4, 1985.

2. On March 13, 1985, the Direct Broadcast Satellite Association (DBSA) submitted a motion for extension of time for filing comments and reply comments to June 30, 1985 and July 15, 1985, respectively. DBSA states that the requested extension is necessary in order to conduct comparative tests of alternative industry proposed DBS transmission systems. DBSA anticipates the completion of these tests in May, 1985 and submission of its test analyses to the Commission by the end of June, 1985.

3. Since the Commission does not intend to unnecesarily impose technical standards on the DBS industry, it appears that the requested additional time is warranted and would afford the opportunity for industry to develop a more unified recommended position with respect to some of the areas which have been proposed for adoption.

4. Accordingly, it is ordered that the time for filing comments and replies to comments to the above referenced *Notice* is extended to and including July 1, 1985, for comments and July 16, 1985, for reply comments.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(i), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85–6989 Filed 3–22–85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 57
Monday, March 25, 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.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: April 15, 1985.

Place: U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3109 South Building, Washington, D.C. 20250.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Financial matters, (2) grain quality, (3) various grain standards, (4) weighing activities, (5) research activities, (6) infestation, and (7) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-0219.

Dated: March 18, 1985.

D.R. Galliart,

Acting Administrator.

[FR Doc. 85-6978 Filed 3-22-85; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Grazing Fee Review and Evaluation Report; Meeting

AGENCY: Forest Service, USDA; Bureau of land Management, USDI.

ACTION: Notice of public meeting; Grazing Fee Review and Evaluation Report.

SUMMARY: The Forest Service and the Bureau of land Management have recently completed a joint draft report on the review and evaluation of the Federal grazing resource as required in the Public Rangelands Improvement Act of 1978. Public review and comment on the report are hereby invited. Public comments will be considered in preparing the final report to Congress, which is expected to be submitted in May 1985.

DATES: The draft report will be released for public review and comment on March 28, 1985, and the comment period will continue through April 29, 1985. Public briefing sessions will be held April 1 through April 5, 1985, at locations listed below.

ADDRESSES. Public meetings will be held in Washington, D.C. and in 10 key locations throughout the West to explain the fee report and to answer questions from the public.

The briefing sessions, to be conducted by staff from the Forest Service and Bureau of Land Management who are knowledgeable about the report, will be held as follows:

Date	Time	Location
Mar. 28, 1985	10 a.m.	Interior Building, Room 5160, 18th and C Streets NW., Washington, D.C.
Apr. 1, 1985	9 a.m.	Stapleton Plaza, Mt. Lincoln Room, 333 Quebec Street, Denver, CO.
Do	1 p.m.	Albuquerque Convention Center, Picuris Room, 401 2nd Street, Albuquerque, NM.
Apr. 2, 1985	10 a.m.	Maricopa County Board of Supervisors, 111 South 3rd Avenue, Phoenix, AZ.
Do	9 a.m.	Holdiay Inn, 204 West Fox Farm Road, Cheyenne, WY.
Apr. 3, 1985	9 a.m.	Salt Palace, Suite B, 100 Southwest Temple Street, Salt Lake City, UT.
Do	10 a.m.	Sparks Nugget Hotel, Bonanza Room A, 1100 Nugget Avenue, Sparks, NV.
Apr. 4, 1985	9 a.m.	Hall of Mirrors, East Conference Room, 700 West State Street, Boise, ID.
Do	9 a.m.	Carmichael Elks Club, 5631 Cyprus Avenue, Sacramento, CA.
Apr. 5, 1985	1 p.m.	Billings Sheraton, Wood Room, 27 North 27th Street, Billings, MT.
Do	1 p.m.	Cosmopolitan Hotel, Athens Room, 1030 NE Union, Portland, OR.

Written comments should be directed to: Grazing Fees FS/BLM Central, 324 25th Street, Ogden, Utah 8401. All comments must be received by April 29, 1985.

SUPPLEMENTARY INFORMATION: Comments are specifically solicited on the following aspects of the study:

1. the various fee systems and levels; and,

2. the evaluation criteria that include equity to the Federal government, permittee impacts, equity among livestock producers, administrative feasibility, consideration of non-Federal government and community interests, and multiple-use considerations.

The Secretaries of Agriculture and the Interior may recommend any appropriate fee schedule that would result in an overall reasonable grazing fee. The schedule may be a single westwide fee, a variable fee based upon pricing areas, or a variable fee based upon a composite of individual pricing areas.

Dated: March 19, 1985.

F. Dale Robertson,

Associate Chief.

[FR Doc. 85-6992 Filed 3-22-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (4 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Survey of Income and Program Participation—Wave 8 Pretest

Form Number: Agency—SIPP-4800(X) SIPP-4805(X); OMB—0607-0425

Type of Request: New collection

Burden: 500 respondents; 250 reporting hours
Needs and Uses: The data collected as a result of this survey is needed to improve and expand data that are currently available on the income and general economic and financial situation of the U.S. population. The survey will be used to pretest Wave 8 topical module questions including household relationships, migration history, marital history, fertility history, reasons for not working/reservation wage, and support for nonhousehold members/work-related expenses.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 19, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-6948 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-077. Applicant: University of Texas System Cancer Center, M.D. Anderson Hospital & Tumor Institute, 6723 Bertner Avenue, Texas Medical Center, Box 73, Houston, TX 77030. Instrument: Electron Microscope, with Eucentric Side Entry Goniometer Stage, Model JEM-1200EX/SEG-10. Manufacturer: JEOL, Ltd., Japan. Intended Use: Study of the structure of human biopsy specimens and body fluids for diagnostic purposes. The experiments to be conducted will include studies on the ultrastructure and chemical composition of cells and extracellular spaces, specifically morphology of bone marrow biopsy tissue which has been selectively stained for immunological markers and by highly specific cytochemical reactions and acridine orange staining will be visualized on the DNA molecules in "activated euchromatin." The instrument will also be used in the training of post-doctoral fellows requiring fine structural and analytical techniques in their research investigations and clinical training, and by doctoral candidates in other disciplines of the basic sciences. Application received by Commissioner of Customs: February 1, 1985.

Docket No. 85-094. Applicant: University of Puerto Rico, Rio Piedras Campus, Rio Piedras, PR 00931. Instrument: Electron Microscope, Model EM 10CA with accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: The instrument is intended to be used in conducting the following research projects:

1. Pathologic processes in experimental animals infected with Schistosomiasis.

2. Identification, characterization of bacteria and specific bacterial strains living in tropical waters.

3. Microstructure of sputtered thin films of metal-dielectric and semiconductor dielectric composite materials-grain size characterization of granular metals.

In addition, the instrument will be used in the course Biology 5902, Electron Microscopy Research to prepare students to use the electron microscope in their thesis and dissertation research, to enable them to intrepret their research results and to understand and interpret published EM work in their respective fields. Application received by Commissioner of Customs: February 12, 1985.

Docket No. 85-104. Applicant: University of California, Irvine, Department of Chemistry, Irvine, CA 92717. Instrument: Electron Spectrometer System, Model ESCALAB MkII. Manufacturer: V.G. Scientific, United Kingdom. Intended use: The instrument is intended to be used to conduct a variety of research projects which will include but are not limited to the following:

(1) Studies of the bonding and chemistry of small molecules on metal and modified metal surfaces.

(2) Study of the bonding of small molecules to metal surfaces.

(3) Study of the chemistry of the lanthanide metals to determine what unique chemical and physical properties can be designed into the molecular complexes of these elements.

(4) Polymer chemistry research concerned with the development of new methods for the selective functionalization of synthetic organic solids.

(5) Further investigations of the correlations between proton affinities and 1S core ionization potentials.

Applications received by Commissioner of Customs: February 15, 1985.

Docket No. 85-107. Applicant: Texas A&M University, Department of Veterinary Anatomy, Highway 60 and Agronomy Road, College Station, TX 77843. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Research aimed at a clearer understanding of the structural and functional organization of animal tissues and how disease states affect that organization. Experiments to be conducted will include: (a) Clarification of the structural properties of the cell surface coat of heart muscle cells from normal and failing hearts in Syrian hamsters, as a model for the disease in humans (b) assessment of the effects of in vitro fertilization by microinjection on baboon oocytes, (c) studies of the effects of long term frozen storage of spermatozoa from rare species of large cats, (d) experiments on the effects of various heavy metal ions known to cause epileptic seizures and (e) studies on the heart failure model, and assessment of bacterially-induced cellular damage in paenid shrimp. In addition, the instrument will be used for training of graduate and professional students in the basics of ultrastructural analysis, ultrastructural methodology, EM histochemistry and the appearance of normal tissue in EM sections. Application received by Commissioner of Customs: February 27, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-6950 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations require the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 83-062. Applicant: Department of Justice, Quantico, VA 22135. Instrument: MS-80 Gas Chromatograph Mass Spectrometer System with Accessories. Date of denial without prejudice to resubmission: September 17, 1984.

Docket No. 84-072 Applicant: University of Chicago, Argonne, IL 60439. Instrument: Frequency Response Analyser, Model 1250A. Date of denial without prejudice to resubmission: December 5, 1984.

Docket No. 84-080. Applicant: Solar Energy Research Institute, Golden, CO 80401. Instrument: Spectrometer System, Model Spectralab 200. Date of denial without prejudice to resubmission: December 14, 1984.

Docket No. 84-262. Applicant: Los Alamos National Laboratory, Los Alamos, NM 87545. Instrument: GC/Mass Spectrometer/Data System, Model 8222. Date of denial without prejudice to resubmission: October 5, 1984.

Docket No. 84-268. Applicant: National Institute of Mental Health, Washington, DC 20032. Instrument: Electron Microscope, Model EM 10CA with Accessories. Date of denial without prejudice to resubmission: October 22, 1984.

Docket No. 84-288. Applicant: University of California, Los Alamos, NM 87545. Instrument: Laser, Tunable Excimer, Model 150 EST. Date of denial without prejudice to resubmission: November 27, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-6949 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Moncrief Radiation Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 83-232.

Applicant: Moncrief Radiation Center, Forth Worth, TX 76104.

Instrument: Therasim 750, Radiotherapy Treatment Planning Simulator and Accessories.

Manufacturer: Atomic Energy of Canada Limited, Canada.

Intended use: See notice at 48 FR 31278.

Comments: None received.

Decision: Denied.

Reasons: (1) The article is not intended for scientific purposes. Item 851.60 of the Tariff Schedules of the United States (TSUS) provides, *inter alia,* that the Secretary of Commerce, whose authority has been delegated to this office, is to determine "whether an instrument or apparatus of equivalent scientific value to [the foreign] article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States" (Headnote 6, schedule 8, part 4, TSUS). In order to make the determination of scientific equivalency, it is clear that some scientific use for the foreign article, whether educational or research, must be although the foreign article falls within the tariff items eligible for duty-free consideration, its purpose is to plan the treatment of patients undergoing radiotherapy thereby achieving savings in equipment cost and personnel. Such purposes are not considered to be scientific as intended by Pub. L. 89-651. Subsection 301.5(d)(1)(iii) of the Commerce regulations (15 CFR Part 301) rules out our consideration of nonscientific purposes and states that instruments used for such (nonscientific) purposes have no scientific value. Therefore, there being no value against which to gauge equivalency, the Department has no basis under Pub. L. 89-651 upon which to justify duty-free entry of the foreign article.

(2) The article also is not intended exclusively for noncommercial use, as required by law. Patients are charged according to a structured rate schedule for the use of this simulator. Headnote 1 of schedule 8, part 4, TSUS provides, among other things, that articles covered by tariff item 851.60 "must be exclusively for the use of the institutions involved and not for distribution, sale or other *commercial use*" (emphasis supplied). Therefore, charges to patients for care and treatment associated with the use of the foreign article appears to violate the provision established in Headnote 1.

(3) The applicant failed to respond to the request for comparison of the foreign article with domestic instruments cited in the denial without prejudice to resubmission [Subsection 301.5(e)(8) of the regulations].

(4) The introduction of new purposes (educational) in the resubmission cannot be considered. Subsection 301.5(e)(7) of the regulations states "an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or clarifying detail, *but the applicant shall not introduce new purposes or other material changes in the nature of the original application*" (emphasis supplied).

The intended use set forth in the original application, charges to patients for care and treatment associated with the use of the foreign article, appears to violate the provision established in Headnote 1.

For these reasons we conclude that the applicant failed to establish that the foreign article is eligible for Headnote 1 consideration and that, if it were eligible for such consideration, there is no domestic instrument capable of satisfying its purposes.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-6951 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-502]

Initiation of Antidumping Duty Investigation; Fuel Ethanol From Brazil

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 fuel ethanol from Brazil 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 this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 11, 1985, and we will make ours on or before August 5, 1985.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Shimabukuro, Office of Investigation Import Administration International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On February 25, 1985, we received a petition in proper form filed by the Ad Hoc Committee of Domestic Fuel Ethanol Producers and the Oil Chemical and Atomic Workers International Union. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners allege that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners base the United States prices on the adjusted Customs C.I.F. value of Brazilian fuel ethanol imports during 1984. These prices were taken from U.S. Census data. The petitioners subtract estimated ocean freight, foreign inland freight and foreign port storage costs to arrive at the ex-factory value. The petitioners add taxes rebated or not collected upon exportation of the product to the United States.

The petitioners allege that sales in the home market were made below the cost of production. Therefore, the petitioners base foreign market value on the constructed value of the merchandise in Brazil. The petitioners calculate the constructed value by taking estimates of cost of production, contained in eight studies concerning the cost of fuel ethanol in Brazil, and add 10 percent for selling, general and administrative expenses and eight percent for profit.

There is sufficient information presented in the petition that sales of fuel ethanol are made below the cost of production in the home market. Therefore, we are initiating a cost of production investigation.

By comparing the values calculated by the foregoing methods, the petitioners allege dumping margins between 55 and 154 percent.

The petitioners allege that critical circumstances exist.

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 examined the petition on fuel ethanol 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 fuel ethanol from Brazil is being, or is likely or be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by August 5, 1985.

Scope of Investigation

The product under investigation is fuel grade ethyl alcohol, also called "fuel ethanol," currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 427.8600 and 901.50.

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 April 11, 1985, whether there is a reasonable indication that imports of fuel ethanol from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 18, 1985.

[FR Doc. 85-7016 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-OS-M

National Bureau of Standards

[Docket No. 50102-5002]

Proposed FIPS for Ada

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Proposed Federal Information Processing Standard.

SUMMARY: A Federal Information Processing Standard for Ada is being proposed for Federal use. It is based on the Federal adoption of American National Standards ANSI/MIL-STD-1815A-1983, Reference Manual for the Ada Programming Language, which is a voluntary industry standard developed by the U.S. Department of Defense. This standard will be added to the current family of Federal Information Processing Standard (FIPS) Languages which includes Minimal Basic, Fortran, Cobol, and Pascal.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed Federal Information Processing Standard (FIPS) contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, is provided in its entirety in this notice; and (2) a specification portion which deals with the technical requirements of the standard. (Interested parties may obtain a copy of the technical specifications from the American National Standards Institute, Inc., 1430

Broadway, New York, New York 10018, (212) 345-3473)

DATE: To be considered, comments on this proposed FIPS must be received on or before June 24, 1985.

ADDRESS: Comments concerning the adoption of Ada as a FIPS are invited and may be sent to Director, Institute for Computer Sciences and Technology, Attn: Proposed FIPS for Ada, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Cugini, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301)921-2431.

Dated: March 19, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication ——

(date)

Announcing the Standard for Ada

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to section 111(f) (2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Ada (FIPS PUB ——).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard Reference Manual for the Ada* Programming Language, ANSI/MIL-STD-1815A-1983, as a Federal Information Processing Standard (FIPS). The American National Standard Ada, ANSI/MIL-STD-1815A-1983, specifies the form and meaning of program units written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Reference Manual for the Ada Programming Language, ANSI/MIL-STD-1815A-1983.

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201-36.1310, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Federal Information Processing Standards (FIPS) Programming Languages.

b. Federal Information Processing Standards Publication 29-1, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS Ada is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Ada is suitable for use in programming the following applications:

—those involving control of real-time processes or parallel processing;

—very large systems, for which correct modularization is crucial;

—systems with requirements for very high reliability;

—systems which are to be developed with reusable software packages.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to the understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. The standard for Ada adopted herein (ANSI/MIL-STD-1815A-1983) does not allow conforming implementations to extend the language. Representation clauses and implementation-dependent features (see section 13 and Appendix F of the standard), whose semantics may differ among processors, should be used only when the needed operation or function cannot reasonably be implemented with the portable features alone. Although

*Ada is a registered trademark of the U.S. Government, Ada Joint Project Office

implementation-dependent features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of statistical and numerical software packages. The use of any facility should be considered in the context of system life, system cost, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is an Ada source program, then the resulting program should conform to the conditions and specifications of FIPS Ada.

10. *Specifications.* FIPS Ada specifications are the language specifications contained in American National Standard Reference Manual for the Ada Programming Language, ANSI/MIL-STD-1815A-1983.

ANSI/MIL-STD-1815A-1983 document specifies the form of a program written in Ada, the effect of translating and executing a program unit, the manner in which program units are combined to form Ada programs, predefined program units that must be supplied, permissible variations from the standard, and violations of the standard that must be and those not required to be detected by a conforming implementation.

The standard does not specify limits on the size or complexity of programs, the results when the rules of the standard fail to establish an interpretation, the means of supervisory control of programs, or the means of transforming programs for processing.

11. *Implementation.* The implementation of FIPS Ada involves three areas of consideration: acquistiton of Ada processors, interpretation of FIPS Ada, and validation of Ada processors.

11.1 *Acquisition of Ada Processors.* This publication is effective (date of publication of final document in the **Federal Register**). Ada processors acquired for Federal use after this date should implement FIPS Ada. Conformance to FIPS Ada should be considered whether Ada processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce Ada processors conforming to the standard. The transition period begins on the effective date and continues for eighteen (18) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, an Ada language processor not conforming to FIPS Ada may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS Ada.* This FIPS PUB includes two parts: (1) the announcement portion (this document only), which contains the applicability and implementation provisions of FIPS Ada; and (2) the technical language specifications, which are contained in ANSI/MIL-STD-1815A-1983.

Resolution of questions regarding the announcement portion of FIPS Ada will be provided by NBS. Questions concerning this part of FIPS Ada should be addresssed to: Director, Institute for Computer Sciences and Technology, ATTN: Ada Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

The responsibility for the resolution of questions concerning the technical language specifications part of FIPS Ada (i.e., ANSI/MIL-STD-1815A-1983) is assigned to the Ada Joint Project Office, which is the sponsor of the ANSI standard. All questions concerning the meaning of FIPS language specifications should be address to: Director, Ada Joint Project Office, 3D139 (400 A/N) The Pentagon, Washington, DC 20301.

11.3 *Validation of Ada Processors.* The General Services Administration (GSA), through its Federal Software Testing Center (FSTC), provides a service for the purpose of validating the conformance to this standard of compilers offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSTC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041-3467 (703-756-6153).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication —— (FIPS PUB ——), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 85-6933 Filed 3-22-85; 8:45 am]
BILLING CODE 3510-13-M

Minority Business Development Agency

Financial Assistance Application Announcement; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 11 months is estimated at $171,417 for the project performance period of August 1, 1985 to June 30, 1986. The MBDC will operate in the Bakersfield Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $145,704 in Federal funds and a minimum of $25,713 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-85029-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposd approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culmating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 13216C, San Francisco, California 94102, April 8, 1985 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Fancisco Regional Office, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102, 415/556-6734.

Closing date: The closing date for applications is April 24, 1985. Applications must be postmarked on or before 5:00 pm—April 24, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Reginal Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

March 19, 1985.

[FR Doc. 85-6935 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Issuance of Permit; North Gulf Oceanic Society

On February 12, 1985, Notice was published in the **Federal Register** (50 FR 5806), that an applicant had been filed with the National Marine Fisheries Service by the North Gulf Oceanic Society, P.O. Box 156, Cordova, Alaska 99574, to harass during photo-identification up to 250 killer whales (*Orcinus orca*) for the purpose of scientific research.

Notice is hereby given that on March 18, 1985, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to the North Gulf Oceanic Society subject to certain condition set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235;

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and

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

Dated: March 18, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-6947 Filed 3-22-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 8:30 a.m., Thursday, 18 April 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Crystal Park One, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Michael Shapiro, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II, Section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 20, 1985.

[FR Doc. 85-6953 Filed 3-22-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy

Date of Meeting: 1 May 1985

Place of Meeting: Washington, D.C. (Exact Location TBD)

Time of Meeting: 9:00 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and of areas of interest for 1985.

All proceedings are open. For further information contact Colonel D. P. Tillar, Jr., United States Military Academy, West Point, NY 10996-5000.

For the Board of Visitors:

D. P. Tillar, Jr.,

Colonel, GS Executive Secretary, USMA Board of Visitors.

[FR Doc. 85-7007 Filed 3-22-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Discontinue the Preauthorization Planning Studies for Arkansas River Hydropower, Fourth Interim, Petit Jean and White Oak Pumped Storage Projects

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent To Discontinue Preauthorization Pumped Storage Planning Studies.

SUMMARY:

Proposed Actions

The Arkansas River Hydropower Study was authorized by a resolution adopted on 20 June 1979 by the United

States Senate Committee on Environment and Public Works to determine the feasibility of providing additional hydroelectric power development on the McClellan-Kerr Arkansas River Navigation System. The study is being documented by a series of interim reports. The fourth interim Preliminary Feasibility Report prepared by the Little Rock District contains plans for the Petit Jean and White Oak Pumped Storage Projects as well as plans for expansion of the existing Ozark and Dardanelle powerhouses.

Due to the lack of public support, further preauthorization planning studies to determine the feasibility of constructing hydropower pumped storage projects at Petit Jean and White Oak have been discontinued. Preliminary analysis of these projects indicate that they are economically feasible. Feasibility studies to expand the existing powerhouses at Dardanelle and Ozark-Jeta Taylor are continuing.

Questions about the projects can be answered by Mr. Ken Carter at the Little Rock District Corps of Engineers, ATTN: SWLED-PR, P.O. Box 867, Little Rock, Arkansas 72203-0867, telephone (501) 378-5607.

Dated: March 12, 1985.

Jerome B. Sidro,

Major, Corps of Engineers, Deputy District Engineer.

[FR Doc. 85-6937 Filed 3-22-85; 8:45 am]

BILLING CODE 3710-YM-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C app.), notice is hereby given that the Naval Civil Engineering Laboratory (NCEL) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on April 10-11, 1985, at the Naval Civil Engineering Laboratory, Port Hueneme, California. The agenda will include technical briefings from the Laboratory Management of NCEL which will assist the team in their efforts to make a thorough evaluation of the scientific, technical and engineering health of the activity. The first session of the meeting will commence at 8:00 a.m. and terminate 5:30 p.m. on 10 April. The second and final session will commence at 8:00 a.m. and terminate at 3:00 p.m. on 11 April 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NCEL. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincey Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: March 20, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-6995 Filed 3-22-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: April 23 and 24, 1985.

ADDRESS: Department of Education, Room 3000, 400 Maryland Avenue, SW. Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Rawlein G. Soberano, Postsecondary Relations Staff, ROB-3, Room 3082, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202/245-9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96-374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

This meeting of the National Advisory Board on International Education Programs is open to the public. The agenda includes a Final Report from the Subcommittee on Reauthorization of the Higher Education Act of 1965, as amended (Title VI). In addition, a report from the Director, Center for International Education and overviews of activities and operations of the Office of Postsecondary Education will be presented.

The meeting will be held from 8:30 a.m. to 4:30 p.m., April 23, 1985. The Committee members will visit the University of Maryland to observe its undergraduate international studies program on April 24, 1985.

Records are kept on the Committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB-3, 7th & D Streets, SW., Room 3907, Washington, D.C.

Signed at Washington, D.C. on March 8, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85-6981 Filed 3-22-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP85-299-000, et al.]

Natural Gas Certificate Filings; Mountain Fuel Resources, Inc., et al.

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Resources, Inc.

[Docket No. CP85-299-000]

March 18, 1985.

Take notice that on February 21, 1985, Mountain Fuel Resources, Inc. (Resources), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP85-299-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR § 157.205) for authority to construct and operate one sales tap and appurtenant facilities to serve as a new delivery point on Resources' transmission system to effect the delivery of natural gas to Mountain Fuel Supply Company (Mountain Fuel) under Rate Schedules CD-1 and X-33 of Resources' FERC Gas Tariff for ultimate sale to Mid-America Pipeline Company (MAPCO) in Sweetwater County,

Wyoming, under the certificate issued in Docket No. CP82-491-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Resources proposes to construct and operate one four-inch sales tap and related metering and regulating facilities on its transmission Main Line No. 58 in Sweetwater County, Wyoming, to effect the delivery of up to approximately 350 Mcf per day to Mountain Fuel a local distribution affiliate of Resources, for ultimate sale to MAPCO. It is stated that MAPCO requires these gas supplies to drive mechanical pumps, operate electrical generators and run dehydration equipment at its Rock Springs pump station, which pumps demethanized natural gas liquids through a segment of MAPCO's Rocky Mountain Pipeline System.

Resources explains that it is authorized to provide sale for resale and firm transportation services for Mountain Fuel under Resources' FERC Rate Schedules CD-1 and X-33 and that Mountain Fuel would make the sale to MAPCO under its Public Service Commission of Wyoming Tariff. It is asserted that operation of the proposed CD-1/X-33 delivery point would not cause resources to exceed the maximum daily quantities applicable to the service provided to Mountain Fuel under FERC Rate Schedules CD-1 and X-33 and that Resources' FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: May 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-320-000]

March 18, 1985.

Take notice that on March 1, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-320-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to install, operate, and maintain small volume measuring facilities to deliver gas to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under its certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to install, operate, and maintain small volume measuring facilities to be used by Peoples to serve two-non-right-of-way grantors as follows:

Name of end-user	Location	Quantity		End-use
		Peak day (Mcf)	Annual (Mcf)	
Dale Schmidt	Meade County, KS.	69	3828	Irrigation engine fuel.
Pioneer Hi-Bred International Inc.	Kandiyohi County,MN.	2.4	403	Space heating.

It is stated that the estimated cost of the proposed facilities would be $4,991.

Comment date: May 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP85-322-000]

March 19, 1985.

Take notice that on March 1, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-322-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap for deliveries to Entex, Inc. (Entex), for resale to Government Services Administration in Oakdale, Louisiana, under authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to construct and operate a 2-inch sales tap to supply Entex with an average 100 Mcf of gas per day for resale to the General Services Administration for use at the Alien Detention Center in Allen Parish, Louisiana, under United's Rate Schedule DS-G. United indicates that it is authorized in Docket No. CP71-89 to provide all of Entex's natural gas requirements for resale and distribution through Entex's systems serving the South Louisiana service area, which United claims includes Allen Parish.

United indicates that the proposed peak day and annual sales of 500 Mcf and 36,500 Mcf, respectively, to Entex for resale to the end-user would not result in an increase in Entex's aggregate base requirements or contractual maximum daily quantity under United's curtailment plan.

United also indicates that Entex would reimburse United for all costs resulting from the tap installation.

Comment date: May 3, 1985, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6930 Filed 3-22-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Richford Broadcasting Co. et al.; Erratum

In re applications of;

Jean E. Richford d/b/a Richford Broadcasting Company (hereafter Richford), Brewer, Maine, Req: 106.5 MHz, Channel 293C, 100 kW (H&V), 279 meters.	MM Docket No. 84-1260; File No. BPH-830907AB.
Stone Communications, Inc. (hereafter Stone), Brewer, Maine, Req: 106.5 MHz, Channel 293C, 100 kW (H&V), 306 meters.	MM Docket No. 84-1261; File No. BPH-840105AA.
Katherine K. Dolby and Eugene Fisk d/b/a Castle Broadcasting (hereafter Castle), Brewer, Maine, Req: 106.5 MHz, Channel 293C, 100 kW (H&V), 367 meters.	MM Docket No. 84-1262; File No. BPH-840105AU.

For Construction Permit for a New FM Station; erratum.

Released: March 20, 1985.

By the Chief, Audio Services Division.

On December 14, 1984 (49 FR 50107; December 26, 1984) a *Hearing Designation Order* was released in the above proceeding. The following corrections are made to the appendix of the *Hearing Designation Order:*

1. Opinion paragraph 33 is amended to read as follows:

Stone is the licensee of FM Station WGUY (Channel 265A), Brewer, Maine,

and proposes to modify its operation to Channel 293C. Pursuant to *Amendment of Section 73.202(b), BC Docket 81-917,* released September 3, 1982, and Commission policy as detailed in *Southern Keswick, Inc.,* 34 FCC 2d 624 (1972), Channel 265A shall, in the case of grant of Stone's application, revert to the public domain and be made available for applications by competing parties.

2. Ordering paragraph 36 of the released *Hearing Designation Order* is deleted, and ordering paragraphs 33, 34 & 35 are renumbered 34, 35 & 36.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-6990 Filed 3-22-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter National Board Program Plan Amendment

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice expands the Emergency Food and Shelter National Board Program Plan's listing of localities selected for funding, which was published in 49 FR 42680 (October 23, 1984).

Initial selections were based on unemployment data for the period June 1983 through May 1984 and poverty data from the 1980 census. Additional jurisdictions were considered selection based on the following:

- Jurisdictions, including balance of counties, with 750 to 999 unemployed persons and a 12 percent or higher unemployment rate.
- Jurisdictions, including balance of counties, with 750 to 999 unemployed persons and an 11 percent or higher poverty rate. However, availability of funds allowed only those jurisdictions with a 16 percent or higher poverty rate to receive awards under this allocation.

There were 144 jurisdictions that qualified for award amounts as follows:

Alabama:	
Choctaw County	$7,608
Clay County	8,661
Conecuh County	8,130
Crenshaw County	7,925
Hale County	8,297
Lowndes County	8,652
Macon County	9,081
Perry County	7,757
Sumter County	8,204
Wilcox County	9,183
Alaska: Ketchikan Division	8,167
Arkansas:	
Clark County	7,030
Cross County	9,137
Drew County	7,235
Hempstead County	7,160
Johnson County	7,011
Lawrence County	8,070
Logan County	7,039
Monroe County	7,225
Polk County	8,176
Randolph County	7,300
California: Trinity County	8,242
Colorado:	
Las Animas County	7,869
Otero County	7,347
Florida:	
Hardee County	9,248
Suwannee County	8,288
Georgia:	
Burke County	8,419
Crisp County	8,176
Decatur County	7,775
Elbert County	8,335
Emanuel County	7,542
McDuffie County	8,083
Meriwether County	7,887
Mitchell County	7,412
Wayne County	7,384
Worth County	7,085
Idaho:	
Clearwater County	7,365
Idaho County	7,076
Illinois:	
Alexander County	7,570
Bond County	8,605
Cumberland County	7,421
Greene County	7,729
Massac County	8,764
Iowa: Floyd County	9,239
Kentucky:	
Adair County	7,719
Breathitt County	8,084
Breckinridge County	8,493
Caldwell County	8,838
Estill County	7,384
Lawrence County	8,260
Lewis County	8,409
McCreary County	7,990
Martin County	7,151
Mason County	7,272
Montgomery County	9,239
Rowan County	8,866
Wayne County	9,043
Webster County	7,430
Louisiana:	
East Carroll Parish	7,319
Sabine Parish	8,223
Union Parish	8,038
West Carroll Parish	8,425
Maine: Lincoln County	8,642
Michigan:	
Benzie County	8,661
Crawford County	7,011
Kalkaska County	8,978
Missaukee County	7,580
Schoolcraft County	8,764
Minnesota:	
Aitkin County	8,903
Clearwater County	7,095
Marshall County	8,027
Todd County	8,978
Mississippi	
Chickasaw County	7,514
Claiborne County	8,018
Clarke County	7,524
Clay County	9,034
Covington County	7,188
Grenada County	9,258
Jasper County	7,477
Lafayette County	8,540
Lamar County	7,393
Leake County	7,785
Montgomery County	7,654
Pontotoc County	7,496
Simpson County	7,757
Tippah County	8,614
Union County	7,002
Wayne County	9,314
Winston County	9,230
Missouri:	
Barry County	8,866
Crawford County	7,160
Dent County	7,570
Mississippi County	8,577
Pike County	7,850
Wright County	7,235
Nevada: White Pine County	7,151
New Mexico:	
Colfax County	8,931
Sandoval County	7,729
North Carolina:	
Ashe County	8,437
Cherokee County	7,869
Hoke County	7,934
Northampton County	7,664
Swain County	8,027
Watauga County	7,514
Ohio:	
Morgan County	7,328
Noble County	7,254
Oklahoma:	
Adair County	7,570
Choctaw County	8,885
Haskell County	7,104
Jackson County	7,561
McIntosh County	7,542
Pennsylvania: Potter County	7,953
South Carolina:	
Fairfield County	7,347
Hampton County	7,606
Lee County	7,831
Tennessee:	
Crockett County	7,496
DeKalb County	7,626
Giles County	7,468
Grundy County	7,393
Hickman County	7,766
Macon County	9,155
Polk County	7,030
Smith County	8,941
Unicoi County	7,337
Wayne County	8,642
Texas:	
Bee County	8,614
Dimmit County	7,589
Polk County	8,484
Shelby County	7,999
Uvalde County	8,913
Utah:	
Emery County	9,053
Sanpete County	7,971
Virginia:	
Charlottesville City	7,393
Dickenson County	8,381
Lee County	8,922
Mecklenburg County	9,062
Scott County	7,207
West Virginia:	
Clay County	8,922
Hampshire County	7,533
Pocahontas County	7,104
Summers County	8,903.

With funding of these additional counties, all monies available for the Emergency Food and Shelter National Board Program have now been allocated.

DATED: March 19, 1985.

FOR MORE INFORMATION CONTACT: Shannon Brady, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 646-3656.

Dennis Kwiatkowski,

Chair, National Board for Emergency Food and Shelter.

[FR Doc. 85-6980 Filed 3-22-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-732-DR]

Major Disaster and Related Determinations; Florida

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–732–DR), dated March 18, 1985, and related determinations.

DATED: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: Notice is hereby given that, in a letter of March 18, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damages resulting from severe freezing temperatures in certain areas of the State of Florida beginning on January 20, 1985, are of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Florida.

You are authorized to provide disaster unemployment assistance under Pub. L. 93–288 in the affected areas. In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Brevard, Broward, Charlotte, Collier, Dade, DeSoto, Hardee, Hendry, Hillsborough, Indian River, Lake, Lee, Manatee, Osceola, Orange, Palm Beach, Pasco, Polk, Seminole, and Saint Lucie Counties for Disaster Unemployment Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–6979 Filed 3–22–85; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOME LOAN BANK BOARD

Northlake Federal Savings & Loan Association, Covington, LA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed James S. Hinman as conservator for Northlake Federal Savings and Loan Association, Covington, Louisiana, effective March 15, 1985.

Dated: March 20, 1985.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85–7000 Filed 3–22–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–003103–077.
Title: Japan/Korea-Atlantic & Gulf Freight Conference.
Parties:
Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Company, Inc.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would add a new article listing the parties to the agreement and would delete United States Lines, Inc. as a party to the agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 202–005700–041.
Title: New York Freight Bureau.
Parties:
Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller-Maersk Line
Nippon Yusen Kaisha
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would add a new article listing the parties to the agreement and would delete United States Lines, Inc. as a party to the agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 202–005700–042
Title: New York Freight Bureau.
Parties:
Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd
Mitsui O.S.K. Lines, Ltd.
A. P. Moller-Maersk Line
Nippon Yusen Kaisha
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the service contract provisions of the agreement to provide that (1) no member may enter into a service contract in its own name: (2) service contracts entered into by the Bureau may be executed on behalf of all or less than all of the Bureau's membership; (3) whenever terms and conditions of a service contract are negotiated by a member, the matter shall be docketed by the Bureau office for a vote or a telex poll; and (4) that the Chairman/Secretary shall arrange to finalize the contract for signing and shall file the contract with the appropriate government agency in the Bureau's name. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 202–008493–014.
Title: Trans-Pacific American Flag Berth Operators.
Parties:
American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would modify the agreement to extend the effectiveness of its neutral body policing provisions through December 31, 1985. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 203-010459-001.

Title: Joint Feeder Vessel Cooperative Working Arrangement.

Parties:

American President Lines, Ltd.

Sea-Land Service, Inc.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 202-010689-004.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.

The East Asiatic Company

Evergreen Marine Corp. (Taiwan), Ltd.

Hanjin Container Lines, Ltd.

Hapag-Lloyd Trans-Pacific Service

Japan Line, Ltd.

Kawasaki Kisen Kaisha, Ltd.

Korea Marine Transport Co., Ltd.

Lykes Bros. Steamship Co., Inc.

A. P. Moller-Maersk Line

Mitsui O.S.K. Lines, Ltd.

Neptune Orient Lines, Ltd.

NYK Line

Sea-Land Service, Inc.

Showa Line, Ltd.

United States Lines, Inc.

Yamashita-Shinnihon Steamship Co., Ltd.

Orient Overseas Container Line, Inc.

Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to establish a Canada Voting Group having jurisdiction over cargo loaded at East Canada ports, or cargo originating at an East Canada port or point loaded at a port on the Atlantic or Gulf Coasts of the United States moving to destinations covered by the agreement. The parties have requested a shortened review period.

Agreement No.: 224-010736.

Title: Long Beach Terminal Agreement.

Parties:

The City of Long Beach (City)

Long Beach Container Terminal, Inc. (LBCTI)

Synopsis: The agreement provides for the City to expand its terminal facilities at Berths 6-10, Pier A within the Port of Long Beach. LBCTI has applied to the City to relocate it operation from Berths 243-244, Pier J to Berths 6-10, Pier A. LBCTI shall use the premises to conduct a marine terminal operation, including activities necessary and essential in carrying out the authorized uses and purposes. The term of the agreement will be for 15 years. Upon the commencement of Agreement No. 224-010736, Agreements Nos. T-3909 and T-3909-B covering LBCTI's use of the facilities at Pier J, will be terminated.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

Dated: March 20, 1985.

[FR Doc. 85-7011 Filed 3-22-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Teresa Frances Fisher, dba Peach International, 1895 Phoenix Blvd., Suite 249, College Park, GA 30349

Delmar Forwarding Corp., 1601 SW 13th Avenue, Miami, FL 33145; Officers: Roman H. Garcia, President, Alina Gonzalez Mayo

Nilda Haydee Fadhel, 4420 S.W. 135 Avenue, Miami, FL 33175

Marco's Inc., 650 Grain Exchange Bldg., Minneapolis, MN 55415; Officers: Marlene Mary Cook, President, John B. Hidding, Secretary/Treasurer/Director, Stephen Andrew Cook, Vice President

William L. Bliss, dba OSC International, P.O. Box 924916, Houston, TX 77292

First Union Export Trading Company, 301 South Tryon Street, First Union Plaza (CORP-14), Charlotte, NC 28288; Officers: Marion A. Cowell, Jr., Vice President, David H. Dorminey, President, David G. Morrow, Vice President

Centra Worldwide, Inc., 1031 W. Manchester Blvd., Unit G, Inglewood, CA 90301; Radford C. Robinson, President, Bonnie C. Robinson, Chairman of the Board, Angel G. Vivas, Jr., Vice President/Secretary

Kamtel Corporation, 2228 Livingston Street, Oakton, CA 94606; Jim W.C. Kriegsman, Director, Robert Gary Spohr, President, Dan Randall, Chairman

LOH International Movers, Inc., 114 Adeline Street, Oakland, CA 94607; Officers: James L. Swint, Jr., President/Treasurer/Director, Carey L. Swiers, Secretary/Director, Ricardo Hugo da Silva, Director

Johnnie C.F. Chin, dba J.C. Express, 5300 W. Century Blvd., Suite 409, Los Angeles, CA 90045

Fast-Flow, Inc., 1301 NW. 78th Avenue, Miami, FL 33126; Officers: Jose A. Galdo, President, Mary Ellen Roque, Vice President, Ronald Patience, Treasurer

Star-Trans International, Inc., c/o Whitman & Ransom, 522 Fifth Avenue, New York, NY 10036; Young Sun Lee, President/Treasurer/Director, James J. Mauro, Vice President/Secretary

John G. Gillet, dba J. Grillet International, 5819 Firenza Drive, Houston, TX 77035

Lido Van & Storage Company, Inc., 2200 Alton Avenue, Irvine, CA 92714; Officers: Nick Koravos, President, Mike Lyristes, Vice President

Ghalb Paul Ghannoum, 21483 Crozier Avenue, Boca Raton, FL 33428

Richard H. Simpson, dba The Simpson Company, 606 Johnston Street, Savannah, GA 31405

Jay Christopher Lyons, dba Jay C. Lyons, 2472 East Main Street, 2nd Floor, #8, Bridgeport, CT 06610.

By the Federal Maritime Commission.

Dated: March 19, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-6944 Filed 3-22-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1067

Name: Gordon H. Dickson

Address: 201 Coleman Bldg., Seattle, WA 98104

Date Revoked: December 26, 1984

Reason: Failed to maintain a valid surety bond

License Number: 1311

Name: William P. Mulry dba WPM International

Address: 26 Broadway, New York, NY 10004

Date Revoked: February 13, 1985

Reason: Failed to maintain a valid surety bond

License Number: 2711
Name: Edwin A. Stebbins dba Edwin A. Stebbins & Co.
Address: P.O. Box 133, Gulfport, MS 39501
Date Revoked: February 14, 1985
Reason: Voluntarily requested revocation
License Number: 1254–R
Name: Schalmar International, Inc.
Address: 160–32 82nd Street, Howard Beach, NY 11414
Date Revoked: February 19, 1985
Reason: Voluntarily requested revocation
License Number: 2168
Name: International Movements, Inc.
Address: 4965 Mountain Road, Pasadena, MD 21122
Date Revoked: February 21, 1985
Reason: Failed to maintain a valid surety bond
License Number: 280
Name: Pitt & Scott Corporation
Address: c/o Sobel Shipping Co., 170 Broadway, New York, NY 10038
Date Revoked: February 6, 1985
Reason: Voluntarily requested revocation
License Number: 1255–R
Name: Day & White, Inc.
Address: 215 Plume Street, Norfolk, VA 23514
Date Revoked: March 4, 1985
Reason: Surrendered license voluntarily
License Number: 889
Name: Wedemann & Godknecht, Inc.
Address: 71 Broadway, New York, NY 10006
Date Revoked: March 9, 1985
Reason: Failed to maintain a valid surety bond
License Number: 1973–R
Name: San Diego International Marine, Inc.
Address: 945 W. Valley Parkway, Escondido, CA 92025
Date Revoked: March 11, 1985
Reason: Surrendered license voluntarily
License Number: 1392–R
Name: Friedland International Shipping Corp.
Address: c/o Crescent Navigation, Inc., 5 Marineview, Hoboken, NJ 07030
Date Revoked: March 11, 1985
Reason: Voluntarily requested revocation
License Number: 862
Name: I.C. Harris & Co.
Address: 1237–45 First Nat. Bldg., Detroit, MI 48226
Date Revoked: March 12, 1985
Reason: Surrendered license voluntarily
License Number: 491
Name: Gem Forwarding Corp.
Address: 395 Broadway, New York, NY 10013
Date Revoked: March 14, 1985
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85–6945 Filed 3–22–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

State National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interesterd persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *State National Bancorp, Inc.*, Maysville, Kentucky; to acquire 80 percent of the voting shares or assets of Farmers Liberty Bank of Augusta, Augusta, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Bank of Florida, Inc.*, Jacksonville, Florida; to acquire 100 percent of the voting shares or assets of Barnett Bank of Hernando County, N.A., Spring Hill, Florida, a *de novo* bank.

2. *First State Corp.*, West Blocton, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Bibb County, West Blocton, Alabama.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *United Bancor, Ltd.*, Dickinson, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of American Bancor, Ltd., Dickinson, North Dakota.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Northeastern Oklahoma Bancorp., Inc.*, Indla, Oklahoma; to become a bank holding company by acquiring 94.8 percent of the voting shares of Bank of Indla, Indla, Oklahoma.

Board of Governors of the Federal Reserve System, March 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–6929 Filed 3–22–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement Demonstration Program To Conduct Workplace Health Hazard Evaluations; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health, Centers for Disease Control, announces the availability of funds for Fiscal Year 1985 to continue the cooperative agreements for State health departments to conduct workplace health hazard evaluations. Assistance will be limited to those three States that presently have a cooperative agreement. The cooperative agreements are authorized by section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)). No new applications are being accepted in Fiscal Year 1985.

It is expected that approximately $265,000 will be available for Fiscal Year 1985 to support three cooperative agreements. The funding estimate may vary and is subject to change. Continuation awards within the project period are made on the basis of satisfactory performance and on the availability of funds.

FOR FURTHER INFORMATION CONTACT:

Leo A. Sanders, Chief Grants Management Branch Procurement and Grants Office Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262–6575 or FTS 236–6575.

Dated: March 15, 1985.

L. W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-7006 Filed 3-22-85; 8:45 am]

BILLING CODE 4160-19-M

Future Research in Tuberculosis—Prospects and Priorities for Eradication of the Disease; Open Meeting—Correction

The notice of a meeting on Future Research in Tuberculosis—Prospects and Priorities for Eradication of the Disease, to be held June 5–7, 1985, was published in the **Federal Register** (50 FR 9718) on Monday, March 11, 1985.

The commercial telephone number for additional information should read: (404) 329–2523. All other information concerning this meeting, as published on March 11, 1985, is unchanged.

Dated: March 19, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-6940 Filed 3-22-85; 8:45 am]

BILLING CODE 4160-18-M

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee
Date: April 15–16, 1985
Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Georgia 30333
Time: 8:30 a.m.
Type of Meeting: Open

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee, Centers for Disease Control (1–2047), 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephones: FTS: 236–3751, Commercial: 404/329–3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will review and discuss data on Reye's Syndrome, rabies vaccine, hepatitis B, and poliomyelitis; discuss chemoprophylaxis of *Haemophilus influenzae;* discuss revised recommendation on diphtheria, tetanus, and pertussis; and consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: March 19, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-6939 Filed 3-22-85; 8:45 am]

BILLING CODE 4160-18-M

Sentinel Health Event Follow-Back Project; Open Meeting

The following meeting will be convenced by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: April 18, 1985
Time: 9:00 a.m.–2:00 p.m.
Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To discuss the protocol for the Sentinel Health Event Follow-Back Project. This project will establish a procedure for investigating cases of occupational Sentinel Health Events (SHE(O)), reported by medical providers and public health agencies. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Ms. Jan Handke, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–4411, Commercial: 513/684–4411.

Dated: March 19, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-6938 Filed 3-22-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 85F-0023]

Drew Chemical Corp.; Filing of Food Additive Petition

Correction

In FR DOC. 85–5545 beginning on page 9521 in the issue of Friday, March 8, 1985, make the following correction: On page 9522, in the first column, in the **SUPPLEMENTARY INFORMATION,** in the fourth line, "345(b)(5)" should read "348(b)(5)".

BILLING CODE 1505-01-M

[FDA-225-85-8251]

Memorandum of Understanding With the National Institute on Drug Abuse

Correction

In FR Doc. 85–5550 beginning on page 9518 in the issue of Friday, March 8, 1985, make the following correction: On page 9519, in the first column, in the **FOR FURTHER INFORMATION CONTACT,** in the second line, "Justka" should read "Kustka".

BILLING CODE 1505-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register,** Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981) is amended to reflect the approval of amendments to the functional statements of the three divisions within the Office of Demonstrations and Evaluations (ODE), Office of Research and Demonstrations (ORD), Office of the Associate Administrator for Policy (OAAP).

The functional statements are being amended to reflect the abolishment of the Evaluative Studies Staff (ESS), ODE, ORD, OAAP, and the transfer of the ESS evaluation functions to the three ODE divisions.

The specific changes to Part F. are detailed below:

Section FQ.20.B.1. Office of Demonstrations and Evaluations (FQBA) is amended by deleting the functional statements for the three subordinate divisions and replacing them with new functional statements. The new Section FQ.20.B.1. reads as follows:

a. Division of Long-Term Care Experimentation (FQBA1)

Directs and manages the development, implementation, monitoring, and evaluation of demonstrations and experiments which test innovative long-term care financing arrangements, delivery systems, and combinations of services provided to Medicare beneficiaries and Medicaid

recipients. Conducts demonstrations involving health maintenance organizations, prospective payment of home health agencies, competitive bidding for home health agencies, and capitation experiments. Conducts and evaluates demonstrations which test alternative delivery systems and whether the coordination and management of an appropriate mix of health and social services directed at individual client needs will reduce institutionalization and costs without sacrificing quality of care. Provides technical support and advice to HCFA and Departmental components in regard to long-term care issues. Makes available research findings to assist in policy formulation and program initiatives, and publishes analyses of findings resulting from demonstration projects.

b. Division of Hospital Experimentation (FQBA2)

Directs and manages the development, implementation, monitoring, and evaluation of intramural and extramural hospital financing and reimbursement studies and experiments such as prospective and incentive payment experimentation for hospitals. Directs and manages the study, development, testing, and evaluation of hospital alternative payment systems such as refinement in diagnosis-specific payment and capitated payment rates. Conducts studies and demonstrations on entire facilities or specific areas such as out-patient departments and hospital capital investment. Directs studies and demonstrations which focus on hospital-based and hospital-related activities including physician, home health, skilled nursing, independent laboratories, and other services that result in greater costs effectiveness.

c. Division of Health Systems and Special Studies (FQBA3)

Directs and manages the development, implementation, monitoring, and evaluation of intramural and extramural financing and reimbursement, organizational, and operational studies related to health care delivery systems. Directs the development, testing, and evaluation of cost-effective alternatives to existing institutional and ambulatory care patterns. Directs the development and evaluation of cross-cutting special studies in such areas as combining long-term care and acute care financing, providing of durable medical equipment, managing end-stage renal disease, and minimizing fraud and abuse.

Dated: March 8, 1985.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 85-6954 Filed 3-22-85; 8:45 am]

BILLING CODE 4120-03-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1025, Block 239, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 15, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 15, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-7003 Filed 3-22-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; TXP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OSC-G 5346, Block 556, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 15, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Bouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS

Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 15, 1986.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-7002 Filed 3-22-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent to Perform Interstate Transportation for Certain Nonmembers

Date: March 20, 1985.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transporation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Agway Inc.
(2)Box 4933, Syracuse, NY 13221
(3) 333 Butternut Drive, DeWitt, NY 13214
(4) Ralph E. Hallock, Box 4933, Syracuse, NY 13221
(1) Dairylea Cooperative Inc.
(2) 831 James Street, Syracuse, NY 13203
(3) P.O. Box 395, Tannery Lane, Vernon, NY 13476
(4) Frank Reile, P.O. Box 395, Tannery Lane, Vernon, NY 13476
(1) Dairymen, Inc.
(2) 10140 Linn Station Road Louisville, KY 40223
(3) Georgia Division—2310 Parklake Drive NE, Suite 200, Atlanta, GA 30345
(4) Jim Stapleton, 10140 Linn Station Rd., Louisville, KY 40223
(1) Knouse Foods Cooperative, Inc.
(2) Peach Glen, PA 17306
(3) Peach Glen, PA 17306
(4) William H. Horner, Peach Glen, PA 17306
(1) Lewiston Grain Growers, Inc.
(2) P.O. Box 467, Lewiston, ID 83501
(3) 1200 Snake River Ave., Lewiston, ID 83501
(4) Allan R. Peterson, P.O. Box 467, Lewiston, ID 83501
(1) Southern States Cooperative, Inc.
(2) P.O. Box 26234, 6606 W. Broad St., Richmond, VA 23260
(3) 6606 W. Broad, P.O. Box 26234, Richmond, VA 23260
(4) Garry L. Horn, P.O. Box 26234, Richmond, VA 23260

James H. Bayne,

Secretary.

[FR Doc. 85-6998 Filed 3-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290; Sub-2]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 280 (Sub-2), *Railroad Cost Recovery Procedures.* The application of the index provides for a second quarter 1985 Rail Cost Adjustment Factor (RCAF) of 1.042. This RCAF shows a decrease of .006 in railroad input prices from the first quarter 1985 RCAF of 1.048. No rate actions are ordered.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275-0938; Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: By decision served January 2, 1985 (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all inclusive index of railroad input costs and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the second quarter of 1985 and find that, with one exception, these calculations comply with the rules contained in our decision served January 2, 1985. These rules call for the lease rental portion of the equipment rents component of the index to be calculated using actual data. AAR states that, because a satisfactory lease rental index could not be developed during the two-month period since the release of the final rules, the Producer Price Index for Industrial Commodities less Fuel and Related Products and Power was used as a surrogate. AAR also notes that work on the development of an actual lease rental index is continuing.

Use of this surrogate is acceptable until a satisfactory lease rental index is developed.

We find that the RCAF for the second quarter of 1985 is 1.042. This is a decrease of .006 from the first quarter of 1985. No rate actions are ordered.

The indices and the RCAF derived from AAR's second quarter calculations are shown in Table A (see Appendix). Table B (see Appendix) shows the fourth quarter 1984 index calculated on both an actual basis and a forecasted basis for comparative purposes. This index differs from the one shown in Table A because it was calculated according to the interim methodology which was in use at that time.

In order for the Commission to monitor its forecasting, AAR is required to file the index recalculated on an actual basis for each quarter as the data becomes available. To date we have routinely included these recalculated indices in our quarterly decisions for informational purposes. In order to simplify our quarterly decisions, we will no longer include this item in the future. Parties interested in this information may consult the docket or contact the designated staff.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: March 18, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

TABLE A.—EX PARTE 290 (SUB-2) ALL INCLUSIVE INDEX OF RAILROAD INPUT COSTS

Line No. and index component	1983 weights [1] (percent)	First quarter 1985 forecast [2]	Second quarter 1985 forecast
1 Labor	50.4	146.9	146.5
2. Fuel	10.8	95.7	88.6
3. Materials and supplies	7.5	106.8	108.3
4. Equipment Rents	9.6	150.8	151.2
5. Depreciation	7.7	114.7	115.1
6. Other items [3]	14.0	119.3	120.1
7. Weighted Average	100.0	132.4	131.7
a. 1980=100			
b. Linked index [4]		126.7	126.0
8. Rail Cost Adjustment Factor [5] (10/1/82=100) 120.9=100		1.048	1.042

[1] The values of the 1983 weights differ slightly from those shown in the most recent two preceding quarterly decisions because they have been recalculated according to the all inclusive index methodology now in use. In the new methodology, interest expense is no longer included either as an item or in the total expenses from which the weights are developed.

[2] For this decision, the first quarter 1985 forecasted index was recalculated according to the all inclusive index methodology.

[3] Other items are a combination of the following items all of which are measured by the Producer Price Index for Industrial Commodities less Fuel Related Products and Power.

Index component	1983 weight (percent)
Purchased Services	7.3
Casualties and insurance	2.6
General and administrative	2.2
Other taxes	1.5
Loss and damage	.4
Total other items	14.0

[4] Linking is necessitated by a change to 1983 weights beginning with the fourth quarter 1984. The following formula was used for the second quarter 1985 index:

$$\frac{\text{2nd Quarter 1985 all inclusive index (1983 Weights)}}{\text{1st quarter 1985 all inclusive index (1983 weights)}} \times \text{1st Quarter 1985 Interim Index (Linked Index)} = \text{Linked Index (1980 Weights to 1983 Weights) or}$$

$$\frac{131.7}{132.4} \times 126.7 = 126.0$$

[5] The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980.

TABLE B.—COMPARISON OF FOURTH QUARTER 1984 INTERIM INDEX CALCULATED ON BOTH A FORECASTED AND AN ACTUAL BASIS

Line No. and index component	1983 weights (percent)	Fourth quarter 1984 forecast	Fourth quarter 1984 actual
1. Labor	48.5	146.6	146.6
2. Fuel	10.3	97.3	97.6
3. Materials and supplies	7.2	106.0	106.0
4. Other expenses	34.0	117.2	115.3
5. Weighted average	100.0	128.6	128.0
a. 1980=100			
b. Linked index		127.3	126.7
6. Rail cost adjustment factor		1.053	[1] 1.048

[1] For comparative purposes only, an RCAF for the fourth quarter 1984 has been calculated using actual data. The published RCAF for the fourth quarter 1984 was computed using forecasted data.

[FR Doc. 85-6999 Filed 3-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-37 (Sub-14X); and AB-33 (Sub 28X)]

Oregon-Washington Railroad & Navigation Co. and Union Pacific Railroad Co.; Exemption Abandonment and Discontinuance of Operations; in Umatilla County, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* The abandonment by Oregon-Washington Railroad & Navigation Company and the discontinuance of operations by Union Pacific Railroad Company, of approximately 3.17 miles of track in Umatilla County, OR, subject to conditions for protection of employees.

DATES: This exemption is effective on April 24, 1985. Petitions to stay must be filed by April 4, 1985, and petitions for reconsideration must be filed by Aril 14, 1985.

ADDRESSES: Send pleadings referring to AB-37 (Sub-No. 14X and AB-33 (Sub-No. 28X) to:

(1) Office of the Secretary Case Control Branch Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Jeanna L. Regier, Union Pacific System, 1416 Dodge Street, Omaha, NE 68179.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 14, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-6996 Filed 3-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30142; Sub-2]

Southern Railway Co. & Virginia and Southwestern Railway Co.—Exemption—Extension of Lease; Exemption

March 15, 1985.

Southern Railway Company (SRC) leases and operates the properties of its wholly-owned subsidiary the Virginia and Southwestern Railway Company (VSW), consisting of approximately 100 miles of railroad line in Tennessee and Virginia, by virtue of a 1958 lease, and two 1-year extensions previously granted by the Commission. The last extension expired by its terms on March 14, 1985.[1] The two railroads are considering a merger, and have agreed to a 2-year extension of the lease (until March 14, 1987). On March 7, 1985, SRC and VSW filed a notice of exemption, under 49 CFR 1180.2(d)(3) for the 2-year extension.

This is a transaction wholly within a corporate family which is exempt as a class because it does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any rail employees affected by this transaction shall continue to be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

[1] See Finance Docket No. 30142 (Sub-No. 1), *Southern Railway Company and Virginia and Southwestern Railway Company—Exemption—Extension of Lease* (not printed), served March 26, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-6997 Filed 3-22-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Borden, Inc.*, Civil Action No. 83-1892-MA, was lodged with the United States District Court for the District of Massachusetts. The complaint filed by the United States alleged violations of the Clean Air Act by Borden, Inc. at its Leominster, Massachusetts facility due to discharges of vinyl chloride from relief valves and manual vent valves which were not in accordance with regulations implementing the vinyl chloride National Emission Standard for Hazardous Air Pollutants (NESHAP). The Consent Decree provides that defendant will pay a $90,000 civil penalty and will comply with a specified set of procedures for controlling release of vinyl chloride from emergency relief and manual vent valves at the Leominster plant in the event that the plant, which was shut down for reasons unrelated to the lawsuit, reopens.

The consent decree may be examined at (1) the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, P.O. & Courthouse, Boston, MA 02109, (2) the office of the Environmental Protection Agency, Region I, Office of Regional Counsel, John F. Kennedy Federal Bldg., 22nd Fl., Boston, MA 02203, and (3) the Environmental Enforcement Section, Land and Natural Resources Division, of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 ($0.10 per page reproduction charge) payable to the Treasurer of the United States.

The Department of Justice will receive comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be directed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530, and should refer to *United States* v. *Borden, Inc.*, D.J. reference #90-5-2-1-495.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-6931 Filed 3-22-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notification; Bell Communications Research, Inc. and Honeywell, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Bell Communications Research, Inc. ("Bellcore"), on behalf of a joit venture to which it is a party, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The joint venture is comprised of Bellcore, a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039, and Honeywell, Inc., a Delaware corporation with its principal place of business at Honeywell Plaza, Minneapolis, Minnesota 55408. Bellcore and Honeywell entered into a collaborative research agreement on February 6, 1985, to conduct research and development in the area of advanced gallium arsenide integrated circuits, to better understand applications of such circuits for potential use in connection with telecommunication exchange services and telecommunication exchange access services, and to demonstrate feasibility of research concepts by experimental prototypes of such circuits.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 85-7159 Filed 3-22-85; 9:28 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-19]

NASA Advisory council, Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Planning Committee.

DATE AND TIME: April 24, 1985, 9 a.m. to 5 p.m.

ADDRESS: Space Telescope Science Institute, Fourth Floor Board Room, 3700 San Martin Drive, Baltimore, MD 21218.

FOR FURTHER INFORMATION CONTACT: Dr. H. Warren Moos, Department of Physics and astronomy, Johns Hopkins University, 34th and Charles Streets, Baltimore, MD 21218 (301) 338-7337.

SUPPLEMENTARY INFORMATION: The Planning Committee, chaired by Dr. Louis Lanzerotti, will meet to discuss the organization of the Space and Earth Science advisory Committee Study on "The Structure of the Earth and Space Science Program in a Time of Transition." The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including the Planning Committee members).

Type of meeting: Open.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 18, 1985.

[FR Doc. 85-6928 Filed 3-22-85; 8:45 am]

BILLING CODE 7510-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[Issuance of Circular No. A-114]

Management of Federal Audiovisual Activities

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Final issuance of OMB Circular No. A-114.

SUMMARY: This OMB Circular provides policy and administrative guidance to Federal agencies regarding the management of their audiovisual activities. Circular A-114 was initially issued in 1978 to provide policies regarding the consolidation, use, and management of Federal audiovisual resources. This revised Circular improves the organization and clarity of the original Circular and updates its management policies. Implementation of the Circular is expected to result in reduced cost to the Government.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC 20503, (202) 395-6803.

SUPPLEMENTARY INFORMATION: A draft of the revised Circular was published in the **Federal Register** (49 FR 28639) for review and public comment on July 13, 1984. Comments in response to the **Federal Register** notice were received from four agencies and two private organizations. All comments were carefully reviewed and, to the extent feasible, were reconciled. The main issues raised by the comments include:

1. The Circular requires Federal agencies to make their audiovisual products available to the National Audiovisual Center (NAC) for distribution to the public and other agencies. Some agencies would like to distribute their own audiovisual materials. The Circular authorizes agencies to use distribution channels other than the NAC, but only where the agency head determines that such actions are necessary for the efficient operation of agency programs. This helps prevent the establishment of duplicative and unnecessary distribution networks within the Government.

2. Government research, development, testing, and engineering (RDT&E) activities requested that the definition of "audiovisual services" contained in the Circular be changed and that photo-instrumentation and documentation resources associated with RDT&E support be exempted from the policies prescribed by the Circular. The definition of "audiovisual services" was not changed. However, the requirement for including photo-instrumentation, reconnaissance and documentation footage in the Government's annual audiovisual report was deleted, unless such footage is used to produce an audiovisual production.

3. The draft of the Circular proposed the abolishment of the Federal Audiovisual Committee (FAC). The FAC is an interagency committee. It was established by the original Circular to serve as a central point within the executive branch for resolving Government-wide audiovisual policy issues. The disestablishment of the FAC was opposed by several commenters, as "there would be no one minding the store" and, without it, there would not be a Government-wide focal point for audiovisual management issues. The final Circular continues the FAC.

4. Comments were received to the effect that "Government should not compete with private enterprise" in its audiovisual activities. The model control systems established by OMB Bulletin 81-16 and the procedures for comparing in-house costs against contract costs prescribed by OMB Circular A-76 were viewed as ineffective by some commenters. The present Circular is designed to improve audiovisual management within the framework of existing Government-wide management policies. It complements the policies that were initiated by Bulletin 81-16, together with those contained in Circular A-76. It does not improve or expand those policies, but, emphasizes, specifically, the need to apply them to audiovisual activities.

Darrell A. Johnson,

Acting Deputy Associate Director for Administration.

[Circular No. A-114 (Revised)]

Executive Office of the President, Office of Management and Budget

March 15, 1985.

Subject: Management of Federal Audiovisual Activities.

1. *Purpose.* This Circular prescribes policies and procedures to improve Federal audiovisual management.

2. *Rescission.* This rescinds OMB Circular No. A-114, dated April 13, 1978, and Transmittal Memorandum No. 1, dated August 30, 1978.

3. *Background.* OMB Circular No. A-114 was issued on April 13, 1978, to provide policies governing the consolidation, use and management of Federal audiovisual resources. An amendment to the Circular, issued on August 30, 1978, established an Interagency Audiovisual Review Board and prescribed a Government-wide contracting system for the procurement of motion picture film productions.

On April 20, 1981, the President expressed concern about Government spending for unnecessary magazines, pamphlets and films, A moratorium was imposed on the acquisition of new periodicals, pamphlets, and audiovisual productions, pending the development of specific plans to control spending in these areas. This revised Circular incorporates the audiovisual management control policies prescribed by OMB Bulletin No. 81-16 of June 5, 1981. Bulletin No. 81-16 was issued in response to the President's concerns. The revision also improves the organization and clarity of the original Circular and updates the management policies initially prescribed in 1978.

4. *Applicability and Scope.* The Circular applies to all agencies of the executive branch of the Federal Government.

5. *Responsibilities.*

a. The head of each agency is responsible for promulgating such regulations and controls, as necessary, to implement the provisions of this Circular. Each agency head shall designate an office which will have responsibility for the management oversight of the agency's audiovisual activities. This office should be at a management policy level with agency-wide authority. Internal control systems shall provide for monitoring and documenting the extent of agency audiovisual activities and the use of audiovisual resources.

b. Each agency shall forward the name, mailing address, and telephone number of the office which is assigned responsibility for management oversight of the agency's audiovisual activities to the Office of Federal Procurement Policy (OFPP), with an information copy to the National Audiovisual Center (mailing address: National Audiovisual Center (NAC), National Archives and Records Administration, Washington, D.C. 20409). These designated offices shall serve as the main point of contact for OFPP and NAC in all matters relating to Government-wide audiovisual policies.

c. The individual responsible for management oversight of the agency's audiovisual activities will represent the agency on the Federal Audiovisual Committee (FAC). The FAC is an interagency committee established to advise OMB on Government-wide audiovisual policy issues. The FAC is chaired by the OFPP and meets at the call of the chair.

d. Agencies should institute, maintain, and document management control systems to ensure economy and efficiency in audiovisual activities and in audiovisual production and acquisition. Agency control systems shall meet the following criteria:

(1) The need for audiovisual products must be confirmed at a management level above the using activity before production is authorized.

(2) Monitoring offices should normally not have operational responsibilities for

the production or procurement of audiovisual products.

(3) The policies and procedures governing the mode of operation for audiovisual activities shall be in compliance with OMB Circular No. A-76 (Revised).

(4) The agency control systems must cover all audiovisual productions, including field office productions.

e. Heads of agencies shall be guided by the policies and procedures in this Circular and in the following:

—Attachment A, Audiovisual Activities
—Attachment B, Agency Management of Audiovisual Productions
—Attachment C, Distribution and Evaluation of Audiovisual Productions
—Attachment D, SF 203/Annual Audiovisual Report

6. *Definitions.*

a. Agency: As used in this Circular, agency means any department or independent establishment of the executive branch of the Federal Government.

b. Audiovisual Productions: A unified presentation, developed according to a plan or script, containing visual imagery, sound, or both, and used to convey information. Audiovisual productions include slide sets, film strips, motion pictures, television (videotape and disc), audio recordings (tape and disc) and multimedia (any combination of two or more media) productions.

c. Audiovisual Services: Individual functions such as scripting; photography, sound and video recording; photo instrumentation; film processing; broadcasting; film-to-video and video-to-film transfers; video, film and sound editing; video, film and sound duplication; audiovisual media depository and records center operations; distribution; audiovisual production evaluation programs; and support and maintenance of audiovisual equipment and facilities.

d. Audiovisual Activity: An organization or function within an organization employing one or more individuals whose principal job is to provide an audiovisual service, produce or acquire audiovisual productions, or manage audiovisual resources. Resources include equipment, budgets, facilities, personnel, supplies and accessories.

e. Audiovisual Equipment: Equipment used for the recording, production, reproduction, processing, broadcasting, distribution, storage or exhibiting of audiovisual products.

f. Audiovisual Facility: A building, or space within a building, owned or operated by the Government which houses an audiovisual activity.

7. *Exclusions.* The following materials are excluded from *all* provisions of this Circular:

a. Commercial entertainment productions (such as those distributed to theaters on military installations).

b. Audiovisual information collected exclusively for surveillance, reconnaissance, or intelligence purposes or equipment integrated in a reconnaissance collecting vehicle.

c. Photo-mechanical reproduction, cartography, X-rays, and microfilm/fiche productions.

d. Graphic arts and still photographic activities except when their products are used in audiovisual productions.

e. Productions produced by Voice of America and the Armed Forces Radio and Television Service for exhibition overseas.

Should audiovisual information excluded under paragraphs a through c above be used in producing a subsequent production, that production will be subject to the provisions of the Circular.

8. *Sunset Review.* The policies contained in this Circular will be reviewed by the Office of Management and Budget 3 years from the date of issuance.

9. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Office of Federal Procurement Policy, Office of Management and Budget, Room 9013 New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503, Telephone: IDS 103-6803 or FTS (202) 395-6803.

David A. Stockman,
Director.

Attachment A—Audiovisual Activities

1. *Purpose.* This Attachment describes specific policies governing the management and utilization of audiovisual activities.

2. *Consolidation.* Agencies shall consolidate audiovisual activities into as few locations as possible. As a general rule, each agency will attempt to consolidate its audiovisual activities into a single facility within each metropolital area. Where consolidation is not feasible or economical, these activities should, as a minimum, be centrally managed.

3. *Commercial Activities.* Audiovisual activities and related functions, such as graphic arts and still photographic activities, provide products or services which can be obtained from commercial sources and should not be initiated or continued with Government resources unless justified under the provisions of OMB Circular A-76.

a. *Utilization.* Through the use of management studies specified in OMB Circular No. A-76, agencies shall survey existing audiovisual activities to ensure full use of facilities, personnel and equipment. Resources made available from these studies or in the consolidation of audiovisual activities shall be declared excess in accordance with existing regulations.

b. *Use of Other Federal Activities.* Excess audiovisual property and services available from other Federal agencies may be used unless the needed product or service can be more economically obtained from the commercial sector. Prices shall be solicited from the commercial sector and from the prospective providing agency. A contract shall be awarded if the commercial price is more economical.

(1) Agencies shall not retain, create or expand internal audiovisual capacity for the purpose of providing commercially available products or services to other agencies, foreign governments, or private organizations. When the performing agency's own requirements increase, capacity used to support other agencies shall be used rather than acquiring additional capacity for the purpose of supporting other agencies. Agencies using such excess capacity should be provided sufficient notice to arrange alternative sources.

(2) All audiovisual activities must be inventoried and reviewed for possible conversion to contract by September 30, 1987, and all external support must be included in the Performance Work Statement developed for this review. If the activity has been reviewed, agencies may use the products or services provided with no further justification. If, after September 30, 1987, the activity has not been justified for continued in-house performance, under the provisions of OMB Circular A-76, user agencies shall obtain the required services directly from a commercial source.

Attachment B Agency Management of Audiovisual Productions

1. *Purpose.* This attachment provides guidance to improve agency management of audiovisual productions.

2. *Policy.* Audiovisual productions, where cost effective and otherwise appropriate, may be used by agencies to support specific Government programs. Audiovisual productions should be limited to those essential to agency missions and should not be used to promote an agency or to provide forums for agency opinions on broad subjects, without specific program reference. As a general rule:

a. Agencies should not develop or support audiovisual productions to influence pending legislation, promote sales of products, or promote the status of various industries.

b. Material produced for research or documentation must be limited to research or documentation; not the promotion of an agency's programs.

c. Agencies should use procurement contracts to procure audiovisual productions. Grants, cooperative agreements and other legal instruments should not be used when the production is intended for the direct benefit or use of the Government.

d. Procurement policies and procedures for audiovisual productions are contained in OFPP Policy Letter 79–4.

3. *Needs Assessment.* The acquisition or production of audiovisual products may be authorized only where the agency has determined that the products are the most effective means of communicating the required message to the intended audience. In making this determination, agencies shall consider and document all relevant factors, including but not limited to: Communication objective; target audience; production costs; user cost; life span of the information to be conveyed; frequency of use; immediacy of requirement; necessity for periodic updating; method, level and cost of distribution; and compatability with other existing communication programs.

4. *Subject Search.* Agencies must check commercial and Government sources before authorizing audiovisual productions or procurements.

a. Prior to authorizing any type of audiovisual production, all agencies will attempt to determine if existing productions are available to satisfy its needs. Agencies should use the resources of the National Audiovisual Center (NAC) to determine what Federal productions exist by requesting subject searches. Standard Form 282 (Appendix I) may be used for this purpose. Agencies should also review commercial media collections, either through catalogs or computer-based resources. If there are no existing Federal or commercial productions available, the agency may produce, within existing budget limitations, additional productions to support program responsibilities.

b. *Federal Audiovisual Production Report (SF 202).* The Federal Audiovisual Production Report (FAPR), Standard Form 202 (Appendix II), will be prepared by each agency when production is authorized for all productions except those excluded by Part 7 below. The FAPR assists Federal agencies in learning about similar products existing or planned in other agencies, and helps reduce duplication of effort. Pre-production sections of the report will be completed and sent to NAC and will consist of information about materials planned or in process. Upon completion of an audiovisual production, the post-production sections of the FAPR will be completed and forwarded to NAC. This information will become part of the Center's data base. Information from the data base will be provided to other Federal agencies and the public. Copies of Standard Form 202 may be obtained from GSA through agency forms distribution systems.

c. The DOD will compile its own production data using the DOD Form 1955, DOD Audiovisual Production Report. Information about these productions will be made available to NAC through the Defense Audiovisual Information System (DAVIS).

5. *Government Employees as Actors.*

a. All Federal employees (including active-duty military personnel) are prohibited from playing dramatic roles, narrating, or acting in Federal audiovisual productions except:

—When performing their own job
—When a production is to be used only for internal communications or training, and the Government employees are playing roles developed for training purposes in connection with their own job, without using a prepared script
—When the skills or knowledge of the Government employees cannot be readily supplied by professional actors, and cannot be supplied by a prepared script

Government personnel shall not perform roles which subject then to health or safety hazards not normally encountered in their own jobs.

6. *Stock Footage.* Agencies, except the DOD shall offer to the Special Archives Division, National Archives and Records Administration, motion picture out-takes, trims, and other unedited motion picture footage (with stock footage value) accumulated in the production of audiovisual products. The footage will be made available to other Federal agencies and the public through services provided by the Special Archives Division, National Archives and Records Administration, Washington, DC 20408.

7. *Exclusions.* Agency productions that are *excluded* from pre-production and post-production reporting requirements are:

a. Security-classified items.

b. Items produced for internal agency use that are exempt from public disclosure under the provisions of the Freedom of Information Act (80 Stat. 383; 5 U.S.C. 552), as amended.

c. Items the agency decides would not benefit the public because the useful life is too short (usually less than one year) or the production budget is too small (less than $5,000).

d. Mixed media packages with predominance of printed material usually handled by the U.S. Government Printing Office.

e. Productions prohibited by law from distribution in the United States.

f. Productions related to timely coverage of a news event such as public service announcements, newsclips or audio recordings, or television and radio spot announcements.

g. Unique or highly-specialized technical materials useful only to a single agency.

h. Multi-media productions requiring special projection equipment or electronic programmers.

i. Productions from criminal investigations or other legal evidentiary procedures.

j. Photo-instrumentation, reconnaissance, or documentation footage. Exclusion does not include productions produced from this footage.

Note.—With the exception of 7j, all excluded items *must* be reported in the agency Annual Audiovisual Report (SF 203) (see Attachment D of this Circular).

Attachment C— Distribution and Evaluation of Audiovisual Productions

1. *Purpose.* This Attachment provides policy and guidance for improving the distribution and evaluation of Government-owned audiovisual productions, and provides for the centralization of specific audiovisual management services in the National Audiovisual Center (NAC), National Archives and Records Administration.

2. *Services Provided by NAC.* NAC will:

a. Serve as the central information source to the public and Federal agencies concerning the availability of audiovisual productions produced by or for the Government;

b. Rent and sell Federal audiovisual productions to the public and Federal agencies;

c. Compile and publish Government-wide catalogs, as well as use other types of information dissemination techniques, to inform the public on audiovisual productions available for rent and sale;

d. Develop criteria, establish appropriate terminology, and recommend Government-wide practices for the cataloging and indexing of audiovisual productions; and

e. Maintain a data bank containing information on Federal audiovisual productions.

3. *Policy.* Agencies shall provide NAC information, as cited in Attachment B, and all productions necessary to perform this service. Agencies shall use NAC services to increase the dissemination of audiovisual product information to the public and improve access to and the use of Federal audiovisual productions.

4. *Distribution.*

a. Upon request, agencies will provide all duplication materials necessary for NAC to reproduce copies of specific productions and make them available to the public and other Federal agencies.

b. Agencies may elect to loan duplication materials to NAC when required, or provide it for the Center's permanent use. Under either condition, NAC retains the right to place duplication material in a laboratory selected by the Center to ensure the best price to the public. Duplication material on loan to NAC will be returned to the agency but may, through special arrangement with the producing agency, be retained in the Center's labortory until specifically requested by the agency.

c. When acceptable duplication material is no longer available from an agency, the agency will loan NAC the original materials and/or printing masters necessary for the Center to reproduce, at its expense, the duplication material needed for reproduction. The original material may be maintained at the agency's laboratory for duplication or, if mutually agreeable, be moved to a labortroy designated by NAC. Agency materials will be returned immediately after production of the duplication materials.

d. Arrangements for the transfer of duplicating materials to NAC will normally be initiated by the Center. Agencies desiring to deposit duplicating materials with NAC may arrange for automatic transfer upon completion of productions by executing an interagency agreement with the Center.

e. NAC shall determine the prices of items for sale and rent through the Center under the authority of 44 U.S.C. 2112(c).

f. In addition to using NAC's services, an agency may make its productions available for sale, rent, or loan to the public through other distribution channels provided the agency head determines that such actions are necessary for the efficient operation of the agency's programs. Agencies shall, however, periodically review their distribution programs and discontinue any which duplicate NAC services.

5. *Loan Programs.*

a. Agencies which maintain multiple loan libraries shall attempt to consolidate them. Each agency should have no more than one loan library in a geographic area. After a title has been in loan distribution through an agency's loan library or through commercial contract for three years, or earlier if appropriate, the title should be considered for further access through NAC's rental program.

b. Multiple award contracts have been made by GSA under Federal Supply Schedule Industrial Group 781 covering the free loan distribution of audiovisual materials. Agencies should obtain pertinent ordering data from the GSA regional office servicing their areas and use the contracts, as appropriate.

6. *Exclusions.* Productions excluded by Attachment B, Part 7, of this Circular need not be submitted to the National Audiovisual Center.

7. *Evaluation.*

a. *Production.* Agency management should perform appropriate evaluation of audiovisual productions and include evaluation in audiovisual management control systems to ensure goals and objectives of the productions were met.

(1) Each agency will develop an evaluation program to assess the value and effectiveness of its audiovisual productions.

(2) Complexity and cost of evaluation should be dependent on the cost and program impact of the audiovisual production being evaluated. For example, agencies should spend less time and money to evaluate a low-cost small impact production than they should to evaluate a high cost or major audiovisual program designed for broad applications. Depending on the production being evaluated, methods could range from a simple tally sheet to record sample responses to a more complex survey with interviews and testing forms.

b. *Distribution.*

(1) Agencies shall evaluate the effectiveness of distribution systems for all products, annually. Evaluation may be performed by developing statistical reports which show the estimated number of viewers of specific productions and the resulting cost per thousand—based on number of viewers and costs of production and distribution. This data should be considered by the agency in authorizing future audiovisual productions.

(2) Before authorizing any production which is estimated to cost more than $50,000, a specific writtendistribution plan must be prepared, including reference to the program the production will support. The agency will evaluate the cost-effectiveness of the proposed production by relating the size of the potential audience to the total production cost.

Attachment D—Standard Form 203/ Annual Audiovisual Report

1. *Purpose.* This Attachment describes reporting requirements for the annual Audiovisual Report, Standard Form (SF) 203.

2. *Policies and Procedures.* Agencies are required to file SF 203, Annual Audiovisual Report (Appendix III), detailing all audiovisual activity each fiscal year. The report is due January 1 each calendar year for the previous fiscal year and should be forwarded to the National Audiovisual Center (NAC), National Archives and Records Administration. *All* audiovisual productions, including productions excluded from other reporting requirments of this Circular, should be reported on the SF 203. The purpose of the report is to acquire data on Federal audiovisual activities, including overhead for in-house expenses. This information, once compiled, will be made available, upon request, to all agencies, and to the public. Copies of SF 203 may be obtained from the NAC.

3. *Periodic Review.* Agencies shall ensure, through management control and cost accounting systems, the accuracy and consistency of audiovisual production budget data provided to OMB and the SF 203 data furnished to NAC.

BILLING CODE 3110-01-M

APPENDIX 1

MANDATORY TITLE CHECK

(Complete for each planned production in accordance with the provisions of OMB Circular (A-114))

Complete and return copies 1 and 2 to:
National Audiovisual Center (NAC)
General Services Administration
Attn: Mandatory Title Check
Washington, DC 20409

1. NAME OF REQUESTING AGENCY

2. DATE

3. AGENCY INTERNAL CONTROL NUMBER *(If required)*

4. AGENCY CONTACT FOR ADDITIONAL INFORMATION

a. NAME AND TITLE

b. TELEPHONE NUMBER *(Include area code)*
☐ FTS ☐ COMMERCIAL

c. ADDRESS *(Include ZIP Code)*

5. INTENDED SUBJECT - BROAD/SPECIFIC

6. SPECIFIC OR UNIQUE ELEMENTS *(Intended audiences, techniques, regulations, etc.)*

7. INTENDED PURPOSE

NAC will complete items 8 through 12 and return to requesting agency.

8. THE CENTER HAS COMPLETED ITS SEARCH FOR PRODUCTIONS SIMILAR TO THOSE ABOVE.

☐ a. We are unable to locate any productions that would meet the requirements specified in your request.

☐ b. We have enclosed information on _____ production(s) which may be appropriate for your program. See instructions block, upper left corner of Standard Form 202 concerning the required justification to continue with your planned production.

9. COMMON DATA BASE (CDB) SEARCH NUMBER

This CDB number is assigned to you. If you decide to continue with your planned production, include this CDB number in Box 2 of Standard Form 202, Federal Audiovisual Production Report when reporting your production to NAC.

10. DATE RECEIVED BY NAC	11. DATE MAILED BY NAC	12. FORM COMPLETED BY *(Signature)*

COPY 1

G.P.O. - 1979 - 627-726

STANDARD FORM 282 (APRIL 1979 EDITION)
Prescribed by GSA, FPMR (41 CFR 101-11.1304)

U. S. GOVERNMENT PRINTING OFFICE: 1979--286-111

Appendix 2

Interagency Report Control No. 0161—GSA-XX

FEDERAL AUDIOVISUAL PRODUCTION REPORT

INSTRUCTIONS: Complete all items unless this is a preproduction report then complete only shaded items (1, 2, 4, 5, 8, 12, 13, 15, 25, 26, 30, 37, 49, 50, and 52). Enter "NA" for all items which are not applicable or for which information is not available. See the back of copy 4 for specific item instructions and one-letter codes to be used for items requiring only a code fill-in.

IMPORTANT—When the mandatory title check has revealed similar audiovisual products, the preproduction report must be accompanied by a separate page explaining why such existing products do not satisfy agency needs. The explanation must include the subject area of the mandatory title check, the number of titles identified, the narrative explanation, and an authorization block containing the signature, date, title, address, and telephone number of the agency official responsible for audiovisual clearance and authorization.

Submit copies 1, 2, and 3 of this form to:

National Audiovisual Center (NAC)
Attn: Cataloging Section
General Services Administration
Washington, DC 20409

1. DATE SUBMITTED	2. *If the mandatory title check was performed, show the search number assigned.* CDB SEARCH NUMBER ▶	FOR NAC USE ONLY 3 IDENTIFICATION NO.
4 TRANSACTION TYPE CODE	5 PRODUCTION STATUS CODE	6 CONTROL NO. *(This number is the same as assigned by NAC on preproduction report.)* ▶

7 AUDIOVISUAL TITLE AND SUBTITLE *(Transcribed exactly as on the completed audiovisual)*

8. WORKING TITLE *(Used to identify audiovisual during production)*

9 SERIES TITLE *(If audiovisual is part of a series)*

10. VERSION *(Revised version, short version, technical edition, etc., to differentiate from another production with same title)*	11. LANGUAGE OF CAPTIONS, SOUND, OR ACCOMPANYING MATERIAL OF AUDIOVISUAL

CODE	12 SIZE	13 STOCK	14 SOUND MODE	15 MEDIUM	16 TRACK	17. PLAYBACK FORMAT	18 PLAYBACK SPEED	19. ADVANCE SIGNAL FREQUENCY	a AUDIBLE Hertz	b INAUDIBLE Hertz	20 RUNNING TIME Min.	*If less than one minute* Sec.

21 NO OF UNITS	22 NO OF TITLES IN SERIES	23 CONTAINER DIMENSIONS	24 REEL DIAMETER	DATE OF ▶	25. BEGINNING PRODUCTION	26. ESTIMATED COMPLETION	27 COMPLETION	28 CANCELLATION	29 RELEASE YEAR

30 ACQUISITION SOURCE TYPE CODE	31 ACQUISITION SOURCE *(Contractor, grantee or production unit)*	ORGANIZATION AND ADDRESS	TELEPHONE NUMBER ☐FTS ☐COMMERCIAL

	Name	*Complete address, including ZIP code*	*Area code and telephone number*
32 SALES DISTRIBUTOR *(If any)*			☐FTS ☐COMMERCIAL
33 RENTAL DISTRIBUTOR *(If any)*			☐FTS ☐COMMERCIAL
34 LOAN DISTRIBUTOR *(If any)*			☐FTS ☐COMMERCIAL
35 LOCATION OF ORIGINAL MATERIAL			☐FTS ☐COMMERCIAL
36 LOCATION OF MATERIAL FOR DUPLICATION OF COPIES			☐FTS ☐COMMERCIAL

If more space is required for items below, use plain sheets of paper, prepared in quadruplicate. Indicate number to which comments apply.

37. NARRATIVE DESCRIPTION OF THE AUDIOVISUAL'S CONTENT *(List as much information as possible.)*

38 SUBJECT AREA *(Categories assigned to identify the audiovisual's subject matter)*	39. CREDITS *(List key individuals or organizations which made noteworthy contribution to the audiovisual's production, if any. Describe contributions of each.)*

40. PRINTED MATERIALS WHICH ACCOMPANY THE AUDIOVISUAL *(See instructions on back of copy 4)*

41. PRIMARY AUDIENCE FOR WHICH AUDIOVISUAL WAS DESIGNED *(Occupation, profession, or other characteristics of the audience)*	42. EDUCATION LEVEL CODE	43. CONTENT STATUS CODE	44 YEAR WHEN SUBJECT CONTENT IS EXPECTED TO BE OUTDATED

45. MULTIMEDIA KIT CONTENTS *(See instructions on the back of copy 4)*

46. T.V. CLEARANCE *(Describe way in which audiovisual may be presented on television)*

47. REPRODUCTION RIGHTS *(Privileges granted or not granted to a purchaser or borrower for the reproduction of the audiovisual)*

48. LIMITATIONS WHICH ARE PLACED ON THE USE, SALE, RENTAL, OR LOAN OF THE AUDIOVISUAL *(If none, so state)*

49. REMARKS *(Awards received or other pertinent information)*	50. TEMPORARY AGENCY CONTROL NO.
	51. PERMANENT AGENCY CONTROL NO.

52. REPORTING AGENCY	a. CONTACT FOR ADDITIONAL INFORMATION ▶ (Name and Title)	AREA CODE AND TELEPHONE NUMBER ☐FTS ☐COMMERCIAL
	b. AGENCY/DEPARTMENT, BUREAU/OFFICE, DIVISION/BRANCH, AND MAILING ADDRESS	c. REPORTING OFFICIAL'S SIGNATURE AND TYPED NAME

COPY 1—NAC

STANDARD FORM 282 (6-78)
Prescribed by GSA, FPMR 101-11.1304

ANNUAL AUDIOVISUAL REPORT
(Read the instructions on the back)

1. REPORTING AGENCY'S NAME

2. REPORT FOR FISCAL YEAR 19

INTERAGENCY REPORT CONTROL NO. 0152-GSA-AN

Submit original and one copy of this report within 90 days from the end of the fiscal year to:
National Audiovisual Center (NAC)
General Services Administration
Washington, DC 20409

3. AGENCY CONTACT *(For additional information)*
a. NAME AND TITLE
b. TELEPHONE NUMBER *(Include area code)*
☐ FTS ☐ Commercial

c. ADDRESS *(Include ZIP code)*

4. AUDIOVISUAL FACILITIES

TYPE	NUMBER OF FACILITIES	TOTAL SQUARE FEET OF SPACE OCCUPIED
a. Government-owned and operated by reporting agency.		
b. Leased by the Government and operated by reporting agency.		
c. Contractor operated.		
d. TOTAL		

5. OFF-THE-SHELF PURCHASES

NUMBER OF	TITLES	COPIES	COST
a. Motion picture			$
b. Video tape/disc			
c. Audio tape/disc			
d. Other media			

MEDIA	NUMBER OF	PRODUCTION			DUPLICATION		AUDIOVISUAL LIBRARY		
		TITLES	MINUTES	COST	MINUTES	COST	COPIES	LOANS	COST
6. MOTION PICTURE	a. In-house								
	b. Contract								
	c. Mixed			* **					
7. VIDEO TAPE/DISC	a. In-house								
	b. Contract								
	c. Mixed			* **					
8. AUDIO TAPE/DISC	a. In-house								
	b. Contract								
	c. Mixed			* **					
9. OTHER	a. In-house								
	b. Contract								
	c. Mixed			* **					

* Indicate the amount of in-house cost
** Indicate the amount of contract cost

10. REPORTING OFFICIAL'S SIGNATURE

11. DATE SIGNED

Standard Form 203 (5-78)
Prescribed by GSA, FPMR 101-11.1304

INSTRUCTIONS

Audiovisual activity—Resources used to provide an audiovisual service or produce an audiovisual product. Resources include equipment, facilities, personnel, supplies and accessories.

Audiovisual facility—A building or space within a building owned or operated by the Government which houses either an audiovisual activity, audiovisual equipment or a capability to provide an audiovisual service. Space used to produce an audiovisual product with portable equipment shall be classified as an audiovisual facility for purposes of this report.

Off-the-shelf—Commercial productions purchased for agency use, with or without modification. (Includes purchase of rights and preprint materials.)

Other media—Includes silent and sound filmstrips, sound slide sets, multimedia kits, and programed learning packages utilizing audiovisual media. Totals for these should be reported together. For media not presented at a fixed speed, such as silent filmstrips, an estimated viewing time should be used where the form requires minutes to be reported. Do not report on transparencies, silent slide sets, still photographs, or graphic arts unless combined with other media in multimedia kits or programed learning packages.

In-house—Products and services supplied directly by the staff of the using agency, or for the using agency by the staff of another Federal agency.

Contract—A commercial source providing audiovisual products and services to an agency through contract or purchase order.

Mixed—A combination of in-house and contract resources. As an example, a mixed production would occur when an agency using in-house staff prepares a treatment or a script and then contracts for the production of the treatment or script.

Cost—Includes all direct and indirect costs associated with in-house and contract operations. Contract costs should include amounts paid directly to suppliers and expenses of preparing solicitations; evaluating offers; and negotiating, awarding, and managing contracts. In-house costs should include all amounts paid for personal services and benefits; space rental, including maintenance, repair, and utility services; supplies, materials, and equipment purchases; travel and transportation expenses; consultant and service fees; and indirect costs such as management and supervision.

Duplication—Creation of one or more copies of a medium.

Standard Form 203 Back (5-78)

[FR Doc. 85-6841 Filed 3-22-85; 8:45 am]
BILLING CODE 3110-01-C

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Demand Forecasting Advisory Committee; Regular Meeting

AGENCY: Demand Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of Minutes of March 7, 1985 Meeting.
- Discussion of the Revised Preliminary Demand Forecasts.
- Discussion of Frozen Efficiency Forecasts.
- Adjourn meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Demand Forecasting Advisory Committee.

DATE: Thursday, March 28, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Terry Morlan, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–6934 Filed 3–22–85; 8:45 am]

BILLING CODE 0000–01–M

PENSION BENEFIT GUARANTY CORPORATION

[Case No. 120–563]

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan; The Great Atlantic & Pacific Tea Company, Inc., and Kohl's Food Stores, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 to The Great Atlantic & Pacific Tea Company, Inc., and Kohl's Food Stores, Inc. A notice of the request for exemption was published in the **Federal Register** on December 26, 1984 (49 FR 50139). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006; 202–254–4860 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: .

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 420(a)(1)(B). Under §2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On December 26, 1984 (49 FR 50139), the PBGC published a notice of the pendency of a request from The Great Atlantic & Pacific Tea Company, Inc. ("A & P"), and its wholly-owned subsidiary, Kohl's Food Stores, Inc. ("Kohl's"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Kohl's from Brown & Williamson Tobacco Corporation ("B & W"), on October 1, 1983, of certain of the property, assets, and business of B & W's Kohl Food Store Division, including the stock of several wholly-owned subsidiaries ("Subs") of B & W that functioned as part of the food store business. (The request antedated the amendments to 29 CFR Part 2643 that were published in the **Federal Register** on May 31, 1984 (49 FR 22635).) No comments were received in response to the notice.

In connection with the sale, A & P and/or Kohl's agreed to assume B & W's and the Subs' obligation to contribute to four pension plans in accordance with related collective bargaining agreements with four unions, viz.:

Union	Plan
United Food and Commercial Workers International Union, AFL–CIO–CLC, Local Unions Nos. 1444 and 214.	Milwaukee Area Retail Food Clerks Pension Fund ("Food Clerks Fund").
United Food and Commercial Workers International Union, AFL–CIO–CLC, Local Union No. 73A.	United Food and Commercial Workers Union and Wisconsin Meat and Allied Industry Pension Plan ("UFCW Plan").
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 200.	Central States, Southeast and Southwest Areas Pension Fund ("Central States Fund").
Carpenters District Council of Milwaukee, Waukesha, Washington and Ozaukee Counties.	Building Trades United Pension Trust Fund ("Building Trades Fund").

Assuming that the entire transaction, including the transfer of the Subs, constituted a sale of assets under section 4204 of ERISA, the total bond/escrow amount required of A & P and/or Kohl's under section 4204(a)(1)(B) is $3,185,819, and the estimated total amount of the withdrawal liability that B & W and/or the Subs would otherwise incur as a result of the sale if section 4204 did not apply to the sale is $15,819,180, broken down as follows:

Plan	Bond	Withdrawal liability
Food Clerks Fund	$1,421,102	$6,832,196
UFCW Plan	993,451	5,019,605
Central States Fund	762,757	3,967,379
Building Trades Fund	8,509	(1)

[1] None.

A & P contributed to the Central States Fund (but not to the other three plans) before the transaction. A & P's estimated potential pre-transaction withdrawal

liability to the Central States Fund is $6,319,590.

A & P and its consolidated subsidiaries had net tangible assets of $180,397,000 as of the end of their fiscal year ending in February 1983.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plans. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to the purchase by Kohl's of assets from B & W. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That is a determination to be made by the plan sponsor.

Issued at Washington, D.C., on this 19th day of March, 1985.

[FR Doc. 85-6994 Filed 3-22-85; 8:45 am]
BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14422; File No. 812-5966]

Alleghany Corporation; Application and Temporary Order

March 15, 1985.

Notice is hereby given that Alleghany Corporation ("Applicant"), Park Avenue Plaza, New York, New York 10055, a Maryland corporation, filed an application on October 25, 1984, and amendments thereto on December 11, 1984, January 7, 1985, and February 26, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant during the period from January 12, 1985, through June 30, 1985, from all provisions of the Act other than sections 17 (a), (d) and (e) of the Act, and from the provisions of sections 17 (a) and (d) of the Act (under certain limited circumstances) or, in the alternative, for an order pursuant to section 3(b)(2) of the Act declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries. Applicant further requests a temporary order pursuant to section 6(c) of the Act similarly exempting Applicant during the period from January 12, 1985, until the Commission shall make a final determination upon the request for exemption made in the application or, if earlier, until June 30, 1985. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

Applicant states that, on January 12, 1984, it sold its major subsidiary, Investors Diversified Services, Inc. ("IDS"), a diversified financial services company, to American Express Company ("American Express"). As consideration for the sale of IDS, Applicant received 11,500,000 common shares of American Express, approximately $333 million in cash and a $40 million principal amount 8% Note due 1994. Applicant further states that its stockholders approved the sale of IDS to American Express at a Special Meeting of Stockholders held on January 11, 1984. In the proxy statement for that meeting, dated November 21, 1983, its stockholders were informed that, absent an applicable exemption, Applicant would be required to register as an investment company under the Act upon the closing of the sale because more than 40% of the value of its assets other than government securities, cash and cash items would be invested in securities of companies which are not majority-owned by Applicant.[1] Applicant represents that its stockholders were informed that Applicant intended to rely on the exception from the definition of investment company provided by Rule 3a-2 under the Act, since Applicant intended to become primarily engaged in non-investment company businesses within the one-year period during which the safe harbor provided by the Rule would be available. Applicant states that, consistent with the requirements of the Rule, at its meeting on November 16, 1983, Applicant's Board of Directors adopted a resolution declaring Applicant's intent to become engaged primarily in non-investment company businesses as soon as reasonably possible and its intent to be engaged in such businesses no later than one year from the date of the closing of the sale of IDS. Applicant states that its officers immediately directed their efforts toward acquiring such non-investment company businesses.

Applicant states that, on April 10, 1984, it submitted an offer to acquire the U.S. Government's ownership interest in Consolidated Rail Corporation ("Conrail") to Secretary of Transportation Elizabeth H. Dole. Since the submission of its offer, Applicant asserts that it has aggressively pursued its intended acquisition of Conrail on a basis clearly intended to achieve this result. Applicant states that on February 8, 1985, Secretary Dole announced that she had selected Norfolk Southern Corporation as her preferred purchaser of Conrail. Applicant states, however, that it has not withdrawn its offer and expects that it will be considered during Congressional deliberations on the proposed sale of Conrail.

Applicant states that it is committed to becoming engaged primarily in operating businesses as expeditiously as possible and throughout 1984 and the first part of 1985 was studying other potential acquisitions, some of which have been considered for acquisition in addition to Conrail and some of which have been considered for acquisition as alternatives to Conrail if Applicant is not able to acquire Conrail. If it is selected by Congress as the purchaser of Conrail, Applicant would clearly be primarily engaged in non-investment company businesses upon completion of the acquisition of Conrail. Applicant states that it will continue its offer for Conrail so long as Applicant believes that it is in the interest of its stockholders to do so. Although Applicant continues to believe that it has some prospects of success, Applicant recognizes that without the support of the Department of Transportation its prospects are reduced. Accordingly, Applicant states that it has intensified its efforts in pursuing other possible acquisition candidates. Applicant anticipates that it can complete the acquisition of Conrail or another acquisition by the end of 1985 and that, if such acquisition is not completed by June 30, 1985, Applicant will have made sufficient progress in negotiating arrangements regarding Conrail or such alternative acquisitions sufficient to support further exemptive action by the Commission for a brief period.

Applicant asserts that its failure to become primarily engaged in non-investment company businesses within one year is clearly due to factors beyond its control. Applicant states that it submitted its offer to acquire Conrail in April of 1984 and that, since that time, almost all of its efforts and resources

[1] Applicant's financial statements for the nine months ended September 30, 1984, and for the year ended December 31, 1983, are incorporated in the application by reference. See also footnotes 2 and 3, *infra*, and the accompanying text.

have been committed to the acquisition of Conrail. Applicant asserts that the length of time required for the deliberative process engaged in by the Department of Transportation was not apparent to either the Department of Transportation or Applicant when Applicant submitted its April 1984 offer.

Applicant contends that the actions of its management since the sale of IDS clearly reflect good faith efforts of Applicant to become primarily engaged in non-investment company businesses. In view of the short-term cash nature of its investments and its use of outside professional managers to assist them, Applicant represents that its personnel spend very limited amounts of time on investment decisions relating to Alleghany's current assets.[2] Applicant further represents that it has not engaged in any speculation or trading in securities, and continues to hold the American Express securities received in the sale of IDS, thus preserving the maximum value of Applicant's assets.[3]

Applicant believes it meets the conditions of section 6(c) of the Act for its exemption request. It submits that the granting of the requested exemption is necesary 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. Applicant submits, in the alternative, that an order pursuant to section 3(b)(2) of the Act is appropriate because, since the sale of IDS, it has been primarily engaged in the manufacture, import and distribution of fabricated steel products, through its wholly owned subsidiary MSL Industries, Inc., and in the process of becoming engaged in new operating businesses. In particular, it is asserted that Applicant's activities have been directed toward acquiring Conrail, and, to a lesser extent, to evaluating possible alternative acquisitions.

Applicant undertakes that during the period for which an exemption is provided (1) Applicant will not engage in trading in securities for short-term speculative purposes and (2) Applicant will continue its intent to become primarily engaged in non-investment company businesses as soon as reasonably possible. As additional protection to its shareholders, Applicant has agreed to be subject to the provisions of section 17 (a), (d) and (e) of the Act which prohibit various transactions with affiliated persons. It does request limited relief under section 17 (a) and (d) of the Act in respect of any transaction with a person who becomes an affiliated person of Applicant or an affiliated person of an affiliated person of Applicant through the acquisition by a company of an interest in voting securities of Applicant after public announcement by Applicant of an intention by Applicant to acquire control of such company.

The request for temporary exemptive relief pending a final determination on the application by the Commission has been considered, and it is found that, in view of the circumstances set forth above and in the application, particularly the negative consequences Applicant believes will result from its uncertain status under the Act during the period from January 12, 1985, until the Commission makes a final determination upon its application or, if earlier, until June 30, 1985, that it is 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 to grant an immediate temporary order as requested by Applicant. Accordingly,

It is ordered, pursuant to section 6(c) of the Act, that the application for a temporary order exempting Applicant from all provisions of the Act other than sections 17 (a), (d) and (e) of the Act and from section 17 (a) and (d) of the Act in respect of any transaction with a person who becomes an affiliated person of Applicant or an affiliated person of an affiliated person of Applicant through the acquisition by a company of an interest in voting securities of Applicant after public announcement by Applicant of an intention by Applicant to acquire control of such company be, and hereby is, granted, during the period from January 12, 1985, until the Commission shall make a final determination upon request for exemption set forth in the application or, if earlier, until June 30, 1985, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-6965 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

[2] As at September 30, 1984, Applicant's short-term securities were represented to consist of $117 million of time deposits, $65 million of United States Treasury Bills, $83 million of United States Treasury Notes and $47 milion of municipal securities. The application states that Brown Brothers Harriman & Co. has been engaged to invest these assets in time deposits and Government securities so as to be available for anticipated needs in acquisition financing.

[3] As at September 30, 1984, Applicant owned equity securities amounting to $372,356,000 out of a total asset composition (on a company only basis) of $817,325,000. Applicant represents that, as at September 30, 1984, equity securities owned by it included 11,200,000 common shares of American express having a market value at September 30, 1984 of approximately $363 million and representing approximately 5.2% of the outstanding common shares of American express. Equity securities owned by Applicant at September 30, 1984, also included 209,425 shares of common stock of The Pittston Company (approximately 0.6% of its outstanding shares) and 287,100 shares of common stock of Orion capital Corporation (approximately 5.1% of its outstanding shares).

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2124.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

New

Form N-14

File No. 270-297

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance proposed Form N-14 under the Securities Act of 1933 to be used to register securities to be issued by investment companies in exchange offers and other business combination transactions under Securities Act Rule 145.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

By the Commission.

John Wheeler,

Secretary.

March 14, 1985.

[FR Doc. 85-6974 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21860; File No. SR BSECC-85-1]

Self-Regulatory Organizations; Proposed Rule Change by the Boston Stock Exchange Clearing Corporation; Amendment to Fee Schedule of Trade Recording Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78 s(b)(1), notice is hereby given that on March 1, 1985, the Boston Stock Exchange Clearing Corporation (the "Corporation") filed with the Securities and Exchange Commission the proposed 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 change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Corporation has amended its schedule of fees to lower the graduated trade recording fee schedule, revise the monthly trade levels to which the fees apply, and to eliminate the separate category for stocks with a value of less than one ($1.00) dollar.

	Old	New
Tier 1	First 1,500 trades/ month @ $.59/100 shares.	First 2,500 trades/ month @ $.44/100 shares.
Tier 2	Next 1,500 trades/ month @ $.57/100 shares.	Next 2,500 trades/ month @ $.25/100 shares.
Tier 3	3,001 and up at $.55/ 100 shares.	Next 2,500 trades/ month at $.15/100 shares.
Tier 4		7,501 and up—no charge for trade 7501 and all subsequent trades
	Stocks with a value of less than $1.00—$.05/100 shares.	Eliminate this category

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(a) The Corporation has lowered trade recording fees across the board. The present fee structure applies a declining fee schedule dependent upon the number of trades cleared per month. The amended schedule changes the monthly trade levels and lowers the fees. Under the proposed fee schedule, the maximum trade recording fee shall be $.44 per 100 shares applicable to the first 2,500 trades. Thereafter the fee declines to $.25, $.15, and $.00 for trades in excess of 2,500, 5,000 and 7,500 respectively.

The amendment also eliminates the separate trade recording charge of $.05 per 100 for trades in stocks with a value less than $1.00.

(b) The basis under the Act for the proposed Rule change is section 17A(b)(3)(D) of the Securities Exchange Act of 1934, as amended, in that the schedule provides for an equitable allocation of fees among participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that the proposed amendment will have an adverse impact on competition. To the contrary, the Corporation expects the changes to enhance competition by enabling Clearing Members to achieve significant cost savings and thus improve their competitive position in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from the members of the Fee Committee composed of Clearing Members of the Corporation. Oral comments were received in favor of the fee proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 change that are filed with 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 at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 15, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 18, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-6973 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21858; SR-CBOE-84-35]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

March 18, 1985.

The Chicago Board Options Exchange, Inc. ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, submitted on December 27, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, which governs the use of automatic execution systems placed on the CBOE's floor to permit market makers to facilitate the entry of stock orders to hedge or cover options positions.

Under the proposal, CBOE will place computer-communication terminals operated by Institutional Networks Corporation ("Instinet") [1] at trading

[1] Instinet is, among other things, a vendor of transaction and quotation data and operates, as a broker-dealer, an automated order routing system. Although CBOE intends to commence with the Instinet System, the proposed rule change would apply equally to other automatic execution systems that CBOE may decide to place on the exchange floor for the same purposes in the future.

posts on the exchange floor for display of price and quotation information only. The systems are intended to facilitate entry of stock orders for market-makers to hedge or cover options positions. Instinet terminals with order entry capability will be placed in member firm booths. Members wishing to use any such system for order entry will continue to communicate, as currently is the case, either personally or via telephone or messengers, to stock execution personnel at member firm booths.

All Commission and exchange rules prohibiting manipulative and other improper or unethical practices in the trading of securities will apply to stock transactions effected through the automatic execution system.[2] In addition, the CBOE will make clear to its members that the Act's rules against unlisted trading of exchange-listed securities prohibits members from making a two-sided market in exchange-listed stocks from the exchange floor through such systems. CBOE will monitor the use of these systems to ensure, among other things, that two-sided markets in exchange-listed stocks are not being made through the system.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 21711, February 4, 1985) and by publication in the **Federal Register** (50 FR 5832, February 12, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6970 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

[2] CBOE will issue an educational memorandum to members emphasizing, among other things, that the use of the systems are subject to all CBOE and Commission rules applicable to the stock activity of broker-dealers.

[Release No. 34-21862; File No. SR-MSRB-85-7]

Self-Regulatory Organizations; Proposed Rule Change by Municipal Securities Rulemaking Board; Relating to Conduct of Municipal Securities Business and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1985, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation to rules G-17 concerning the conduct of municipal securities business and G-15(a) on customer confirmations (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows:

The Board has received inquiries concerning situations in which a municipal securities dealer alters the settlement date on transactions in "when-issued" securities. In particular, the Board has been made aware of a situation in which a dealer sells a "when-issued" security but accepts the customer's money prior to the new issue settlement date and specifies on the confirmation for the transaction a settlement date that is weeks before the actual settlement date of the issue. The dealer apparently does this in order to put the customer's money "to work" as soon as possible. The Board is of the view that this situation is one in which a customer deposits a free credit balance with the dealer and then, using this balance, purchases securities on the actual settlement date. The dealer pays interest on the free credit balance at the same rate as the securities later purchased by the customer.

Rule G-17 provides that

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

The Board believes that this practice would violate rule G-17 if the customer is not advised that the interest received on the free credit balance would probably be taxable. In addition, the Board notes that a dealer that specifies a fictitious settlement date on a confirmation would violate rule G-15(a)(i)(H) which requires that the settlement date be included on customer confirmations.

B. Not applicable.

C. Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The Board has received questions concerning the applicability of its rules to situations in which a municipal securities dealer sells a "when-issued" security but accepts the customer's money prior to the new issue settlement date and specifies on the confirmation for the transaction a settlement date that is weeks before the actual settlement date. The dealer apparently does this in order to put the customer's money "to work" as soon as possible. The Board believes that this situation is one in which the customer deposits a free-credit balance with the dealer and then, using this balance, purchases the securities on the actual settlement date. The dealer pays interest on this free credit balance at the same rate as the securities purchased later by the customer. The Board has determined that this practice would violate rule G-17, the Board's fair dealing rule, if the customer is not informed that the interest received prior to the actual settlement date would probably be taxable. The Board also determined that a dealer who specifies a ficticious settlement date on customer confirmations would violate rule G-15(a)(i)(H), which requires that the settlement date be included on customer confirmations.

(2) The Board has adopted the proposed rule change pursuant to section 15B (b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules

> * * *designed to prevent fraudulent and manipulative acts and practices, 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in

general, to protect investors and the public interest * * *

B. Self-Regulatory Organization's Statement of Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by interpretive inquiries.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of the such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 15, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 18, 1985.

[FR Doc. 85-6971 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21859; SR-MSRB-85-5]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Approval of Proposed Rule Change

March 18, 1985.

The Municipal Securities Rulemaking Board ("MSRB") on February 5, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. Notice of the proposal was published in Securities Exchange Act Release No. 21729 (February 8, 1985), 50 FR 6421 (February 15, 1985). The Commission did not receive any letters of comment on the proposal. This Order approves the proposal.

The proposed rule change amends MSRB Rule G-12 which sets forth certain provisions governing the comparison, clearance, and settlement of inter-dealer transactions in municipal securities. Section (f) of the Rule, which became effective August 1, 1984, provides that municipal securities brokers and dealers that participate in registered clearing agencies, or clear transactions through an agent that is a member of a registered clearing agency, must use the automated comparison facilities of a registered clearing agency to compare their inter-dealer municipal securities transactions. When the MSRB adopted the automated comparison requirements of Rule G-12(f), the MSRB intended that the parties to a transaction submitted for automated comparison would continue to attempt to compare the transaction through the comparison system until the transaction was successfully compared or formal notification of a failure to compare was received. The MSRB thus intended that the parties to the trade would utilize all post-original-comparison features provided by the System.[1]

The MSRB found that some system participants have not been using these post-original-comparison features when their municipal securities transactions have failed to compare during the initial comparison cycle. Instead, these participants have initiated ex-system physical comparison procedures or physical "failure to confirm" procedures in accordance with MSRB Rule G-12(d)(iii). These participants believe that MSRB Rule G-12(d)(vii) governs this situation.[2] The MSRB believes that these participants are misunderstanding the requirements of Rule G-12(f).

MSRB's proposed rule change clarifies Rule G-12 by amending section (f) to require explicitly that municipal securities brokers and dealers use the post-original-comparison procedures for their inter-dealer municipal securities transactions that remain uncompared after the initial comparison cycle. Specifically, the proposal provides that the post-original-comparison procedures must be used until the transaction either is successfully compared or until a formal notification of failure to compare the transaction (*i.e.*, a "DK" notification) is received from the contra-party.[3] Additionally, the proposed rule change would delete Rule G-12(d)(vii) and thereby would eliminate the apparent conflict between Sections (d)(vii) and (f) of the Rule.

The MSRB believes that the proposed rule change will allow an increased number of transactions to compare through the automated comparison system and also eliminate a substantial number of manual comparison procedures. The MSRB further believes that the proposal will give clear guidance to the municipal securities industry by eliminating the source of confusion about whether clearing agency post-original-comparison procedures must be used under MSRB rules. In addition, the MSRB believes that the proposed rule change is

[1] *See* Part II.D. of NSCC's procedures for a detailed description of these features.

[2] MSRB Rule G-12(d)(vii) provides that:

In the event a party has submitted a transaction for comparison through the facilities of a registered clearing agency but such transaction fails to compare, the submitting party shall, within one business day after final notification of the failure to compare is received from the clearing agency, initiate the procedures required by paragraph (iii) of this section [manual failure to confirm procedures]; provided, however, that if the submitting party initiates within such time period, in accordance with the rules of a registered clearing agency, a post-original-comparison procedure on the uncompared transaction, which requires affirmative action of the contra/party, the submitting party shall not be required to follow the procedures required by paragraph (iii) of this section.

This provision was adopted by the MSRB before its adoption of Rule G-12(f). The MSRB viewed Section (d)(vii) to act as a temporary bridge between the MSRB's longstanding physical comparison rules and the initial use of automated clearing agency comparison services by municipal securities brokers and dealers.

[3] These requirements will apply only to transactions already within the automated comparison system and will not require additional transactions not currently subject to Rule G-12(f)(i) to be compared through the automated system.

consistent with the requirements of section 15A(b)(2)(c) of the Act in that it will foster cooperation and coordination with persons engaged in clearing, settling, processing information and facilitating transactions in municipal securities. Finally, the MSRB also believes that the proposal is consistent with section 17A of the Act in that the proposal will enhance the use of automated clearance facilities and provide greater efficiencies in the comparison of inter-dealer transactions.

For the following reasons, the Commission believes that the proposal is consistent with sections 15B and 17A of the Act and the rules and regulations thereunder and, therefore, should be approved. The Commission believes that the proposed rule change will facilitate the automated clearance and settlement of municipal securities transactions by eliminating the confusion that currently exists in the municipal securities industry regarding the proper way of handling transactions that remain uncompared after the initial comparison cycle. Additionally, the Commission agrees with the MSRB that the proposal should allow a greater number of transactions to compare through the automated comparison system and also should eliminate a substantial number of manual comparison procedures. The Commission believes that increased use of clearing agencies efficient post-original-comparison procedures should effectively reduce the incidence of aged, uncompared inter-dealer municipal securities transactions. This reduction in turn should decrease significantly municipal securities brokers' and dealers' related financing and carrying costs. Accordingly, the Commission believes that the proposal should increase the efficiency of the clearance and settlement systems and facilitate establishment of a national clearance and settlement system for municipal securities.

In its filing, the MSRB requested that the Commission delay the effectiveness of the proposed rule change for a period of 60 days following the date of Commission approval. The MSRB believes the delay is necessary to inform all persons effected by the proposals. Accordingly, MSRB's proposed rule change will become effective 60 days from the date that this Order is published in the **Federal Register.**

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6972 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21861, File No. SR-NASD-85-6]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Venture Capital Restrictions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on March 11, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Set forth below is the text of the proposed rule change to the Venture Capital Restrictions of the Interpretation of the Board of Governors—Review of Corporate Financing ("Corporate Financing Interpretation") pursuant to Article III, Section 1 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD" or "Association").

Venture Capital Restrictions*

[No member or officer, director, general partner or controlling shareholder of a member which participates in the initial public offering of an issuer's securities and which beneficially owns any securities of said issuer at the time of filing of the offering shall sell those securities during the offering or sell, transfer, assign or hypothecate those securities for one year following the effective date of the offering.]

When a member participates in the initial public offering of an issuer's securities, such member or any officer, director, general partner, controlling shareholder or subsidiary of the member or subsidiary of such controlling shareholder or a member of the immediate family of such persons, who beneficially owns any securities of said issuer at the time of filing of the offering, shall not sell such securities during the offering or sell, transfer, assign or hypothecate such securities for ninety days following the effective date of the offering unless;

(1) the price at which the issue is to be distributed to the public is established at a price no higher than that recommended by a qualified independent underwriter, as defined in Section 2(k) of Schedule E to Article IV, Section 2 of the By-Laws, who does not beneficially own securities of the issuer, who shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto; or

(2) the sale of such securities by such member or related person would not exceed one percent of the securities being offered.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association believes the proposed rule change will remove an unduly restrictive impediment to the bona fide venture capital operations of NASD members and their affiliates and at the same time provide adequate protection for investors with respect to potential conflicts-of-interest when a member functioning as an underwriter in an issuer's initial public offering of equity securities also acts as a selling shareholder of securities it beneficially owns.

The proposed rule change would amend the Venture Capital Restrictions by not applying either the prohibition against an underwriter selling its own securities in the offering or the lock-up period where the price of the issue is established by a qualified independent underwriter as defined in Section 2(k) of Schedule E to Article IV, Section 4 of the

*New material is italicized; Deleted material is in brackets.

Association's By-Laws ("Schedule E"). In addition, such qualified independent underwriters must not own securities of the issuer, must particiapte in the preparation of the registration statement and other offering documents and must excerise the usual standards of "due diligence" with respect to such participation. In addition, the proposed rule change would provide a *de minimus* exception from application of the rule where the securities of the member to be sold in the offering does not exceed one percent of the securities being offered. The Association believes that the sale of such a small amount of securities does not give rise to the conflicts-of-interest intended to be addressed by the Venture Captial Restrictions.

Where a qualified independent underwriter is not utilized nor the *de minimus* exception available, the proposed rule change would continue to prohibit an underwriter from selling its shares in the offering but would reduce the post-offering lock-up period from one year to ninety days.

At the same time, clarifying changes are proposed to the Venture Capital Restrictions to make clear that the provision applies to securities purchased by the immediate family members and sister subsidiaries of NASD members and associate persons in accordance with prior interpretations of the Association.[1]

The proposed rule change is designed to fulfill the responsibility of the Association under both sections 15A(b)(2) and 15A(b)(6) of the Securities Exchange Act of 1934 for promulgating rules which prevent fraudulent and manipulative practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and generally protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change will eliminate unnecessary burdens on competition in futherance of the purposes of the 1934 Act by relaxing certain provisions of the Venture Capital Restrictions. The amended rule will allow the conflicts-of-interest of an NASD member resulting from the dual occupation of venture capitalist and underwriter to be resolved by employing an independent underwriter to assume pricing and due diligence functions. The rule change will also reduce the restriction period to be compatible with Rule 144 and will allow a *de minimus* exemption for holdings that are too small to represent an actual conflict of interest. While the Venture Capital Restrictions will be explicitly extended to immediate family members and sister subsidaries of NASD members and associated persons, this is deemed to be necessary to achieve the purpose of the rule and is not an additional burden on competition since the present Venture Capital Restrictions have been interpreted to apply to those persons and organizations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Notice-to-Members 84–36 was published on July 18, 1984 requesting comment on several possible amendments to the Venture Capital Restrictions. Twelve letters of comment were received.

The majority of the commentators expressed views regarding the necessity of the Venture Capital Restrictions. Commentators observed that the perceived conflicts-of-interest in pricing and due diligence were substantially ameliorated due to the effects of competitive market constraints in pricing and the substantial liabilities under the federal securities law for failure to make accurate and adequate disclosure. Commentators stated that these protections and their importance in resolving apparent conflicts-of-interest were not sufficiently recognized in the present Venture Capital Restrictions. Commentators consequently endorsed any changes which would limit the unnecessarily onerous effect of the Venture Capital Restrictions on NASD members' investment banking and venture capital operations.

Virtually all of the commentators agreed that the use of a "qualified independent underwriter" to resolve perceived pricing and due diligence conflicts of interest is preferable to the present application of the Venture Capital Restrictions. Commentators agreed that Schedule E has been effective in resolving pricing and due diligence conflicts-of-interest in "affiliated" underwritings and should consequently be useful as a procedure for making the absolute prohibition of the Venture Capital Restrictions unnecessary. While expressing this preference, several commentators indicated their belief that in most cases use of a "qualified independent underwriter" in this manner would be extraneous and unnecessary. In light of the participation of institutional investors and disinterested underwriters in the decision making process with respect to pricing. These commentators also observed that the underwriting liabilities of the Securities Act of 1933 appear to be effective in assuring adequate disclosure even where the underwriter may be a selling shareholder. However, these commentators concede that use of independent underwriters may be useful in resolving the "appearance" of pricing conflicts-of-interest.

Several commentators addressed the broad coverage of the Venture Capital Restrictions to all NASD member participants in the distribution. They suggested that the provision should only apply to those who were actually engaged in the pricing and due diligence process.

Virtually all of the commentators agreed that, while it is useful to require some holding period to allow the market to function efficiently in pricing and issuer's securities after an initial offering to the public, the one year holding period of the Venture Capital Restrictions is unnecessarily onerous. Commentators varied on the extent of the holding period necessary for market seasoning. Several commentators observed that underwriters often require 90-day restrictions from shareholders of issuers making initial public offerings to allow for the distribution to be completed and the market to stabilize.

Commentators agreed upon the necessity of an exemption from the Venture Capital Restrictions for underwriting commitments or transactions that are too small to impact upon pricing and due diligence decision-making. The Notice suggested *de minimus* exemptions where member participation in the distribution or sales of beneficially owned securities were insignificant. A number of specific proposals were made by commentators for a *de minimus* exemption which included: (1) An underwriter of less than 15 percent of the underwritten shares; (2) sales of beneficially owned securities of less than 15 percent of the total offering with no more than five percent owned by managing underwriters; (3) sales of beneficially owned securities of five percent of the total offering or $1,500,000, whichever is greater; and (4) sales of beneficially owned securities of less than one or two percent of the issuer's outstanding shares.

Several commentators alluded to the necessity that any *de minimus* exemption allow both participation in sales of beneficially owned securities in the initial public offering without a qualified "independent underwriter" and also sales into the aftermarket without the holding period.

[1] Notice-to-Members 84–37 (July 18, 1984), at pp. 2 and 3.

Finally, the suggestion was made that any amendments to the Venture Capital Restrictions be drafted to apply retroactively in order to permit securities of NASD members and their affiliates currently subject to the one-year lock-up to be relieved of this obligation if the securities have been locked-up for ninety days.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 15, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 18, 1985.

[FR Doc. 85-6975 Filed 3-22-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0239]

Brentwood Capital Corp.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Brentwood Capital Corporation (Brentwood), 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1985)) for an exemption from the provisions of the cited Regulation.

Subject to SBA approval, Brentwood Capital Corporation proposes to provide funds to Interdevices of Miliptas, California for working capital use.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Brentwood Associates IV, an associate of Brentwood, owns greater than 10 percent of Interdevices, and therefore Interdevices is considered Associate of Brentwood Capital Corporation as defined by § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Miliptas, California area.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 19, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-6923 Filed 3-22-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 06/06-0289]

FCA Investment Co., Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations (13 CFR 107.102 (1985)) by FCA Investment Company, Suite 1790, 3000 Post Oak Boulevard, Houston, Texas 77056 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers and directors are:

Name, Address, and Title

Robert S. Baker, Jr., 815 Creekwood Way, Houston, Texas 77024, Chairman of the Board of Director

Robert W. Scharar, 528 Carole Street, Lakeland, Florida 33803, President

William J. Moore, 234 Colony Road, Longmeadow, Mass. 01106, Treasurer

Brian E. Boyle, 261 Merriam Street, Wenton, Mass. 02193, Director

Thomas H. McConnell, III, 3529 Milton, Dallas, Texas 75205, Director

Deborah C. Zanowiak, 2434 White Oak, Houston, Texas 77007, Director

No corporation, partnership, business entity, or other individual is expected to own 10 percent or more of the voting stock of the company. The private capital will be obtained through the sale of common and preferred stock to a maximum of 100 investors.

The Applicant will begin operations with a capitalization of $1,125,231 and will be a source of equity capital and long term loan funds for qualified small business concerns whose needs might not be met by traditional funding sources.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catlog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 18, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-6926 Filed 3-32-85; 8:45 am]

BILLING CODE 8025-21-M

[Designation of Disaster Loan Area #6288]

New York; Designation of Economic Injury Loan Area

Erie and Niagara Counties in the State of New York constitute a disaster area because of a blizzard, ice jams and flooding which occurred on January 19, 1985. Eligible small businesses may file applications for economic injury assistance until the close of business on December 16, 1985, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey or other locally announced locations. The interest rate for eligible small business applicants without credit elsewhere is 4% and 11.125% for eligible small agricultural cooperatives without credit elsewhere.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 15, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-6922 Filed 3-22-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-016]

Permian Basin Capital Corp.; License Surrender

Notice is hereby given that Permian Basin Capital Corporation (Permian), Midland, Texas, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Permian was licensed by the Small Business Administration on January 3, 1973.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on March 12, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-6925 Filed 3-22-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/14-0024]

Westamco Investment Co.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Westamco Investment Company (WIC), 8929 Wilshire Boulevard, Suite 400, Beverly Hills, California 90211, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the SBA Regulations governing small business investment companies for an exemption from the provisions of the cited Regulation.

The exemption, if granted, will permit WIC to provide financing for the purchase of WIC's stock in Palmcrest Medallion Convalescent Hospital, in an amount up to $1,200,000 to the following individuals:

Mr. Scott T. Van Every, 2472 Ridgeway Road, San Marino, California 91108

Mr. Nicholas M. Brown, 15970 Royal Oak Road, Encino, California 91436

Mr. Thomas L. Harner, 2740 San Vicente, Long Beach, CA 90815

Mr. Donald T. Leahy, 555 Chalette Drive, Beverly Hills, CA 90210

Mr. Leonard G. Muskin, 600 Cole Place, Beverly Hills, CA 90210.

Pursuant to Paragraph (e) of the definition of "Associate of a Licensee" in § 107.3 of the SBA Regulations, these individuals are Associates of WIC. As such, the transaction will require an exemption from the provisions of § 107.903(b)(1) of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy is this notice shall be published in a newspaper of general circulation of Beverly Hills, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-6924 Filed 3-22-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended March 15, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the Adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings: (See 14 CFR 302.1701 et.seq.)

Date filed	Docket No.	Description
March 11, 1985.....	42942	All Star Airlines, Inc., Timothy J. Healey, Sr. V/P-General Counsel, 304 Cambridge Road, Woburn, Massachusetts 01801. Application of All Star Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity for Reno-Seattle/Portland authority. Conforming Applications, motions to Modify Scope and Answers may be filed by April 8, 1985.
March 12, 1985.....	42944	Jet Charter Service Inc., d/b/a JET 24, c/o Robert H. Huey, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 200036-5339. Application of Jet Charter Service Inc., d/b/a JET 24, pursuant to Section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation as follows: (a) Between points in interstate and overseas air transportation within the United States, the District of Columbia, and U.S. territories or possessions; (b) Between coterminal points in the United States, the District of Columbia, or U.S. territories and coterminal points in Belgium, the Federal Republic of Germany, Ireland, Israel, Luxembourg, Netherlands, Portugal, and Switzerland; (c) Between coterminal points in the United States, the District of Columbia, or U.S. territories and coterminal points in Antigua, Bahamas, Barbados, Chile, Costa, Rica, Dominican Republic, El Salvador, Grenada, Guadeloupe, Guatemala, Haiti, Honduras, Jamaica, Martinique, Netherland Antilles, Panama, St. Kitts, and Trinidad, and Tobago; and (d) Between San Juan, Puerto Rico and Mexico City, Mexico. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 8, 1985.

Date filed	Docket No.	Description
Do	49245	Jet Charter Service Inc., d/b/a JET 24, c/o Robert H. Huey, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 200035-5339. Application of Jet Charter Service Inc., d/b/a JET 24, pursuant to Section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity to engage in foreign air transportation as follows: (a) Between points in interstate and overseas air transportation within the United States, the District of Columbia, and U.S. territories or possessions; (b) Between coterminal points in the United States, the District of Columbia, or U.S. territories and coterminal points in Belgium, the Federal Republic of Germany, Ireland, Israel, Luxembourg, Netherlands, Portugal, and Switzerland; (c) Between coterminal points in the United States, the District of Columbia, or U.S. territories and coterminal points in Antigua, Bahamas, Barbados, Chile, Costa, Rica, Dominican Republic, El Salvador, Grenada, Guadeloupe, Guatemala, Haiti, Honduras, Jamaica, Martinique, Netherland Antilles, Panama, St. Kitts, and Trinidad, and Tobago; and (d) Between San Juan, Puerto Rico and Mexico City, Mexico. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 8, 1985.
March 13, 1985	42587	Nordair Ltee-Nordair Ltd., c/o John M. Kriz, Esq., Windels, Marx, Davies & Ives, 51 West 51st Street New york, New york 10019. Amendment to the Application of Nordair Ltee-Nordair Ltd. for a foreign air carrier permit by stating adaditional information and by expanding the requested Permit to include service between Montreal (Mirabel International Airport), Province of Quebec, Canada and Orlando, Florida. Answer. due April 10, 1985.
March 11, 1985	42952	Delta Air Lines, Inc., Don M. Adams, Esq., Law Department, Hartsfield Atlanta Int'l Airport, Atlanta, Georgia 30320. Application Delta Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations for a new or amended certificate of public convenience and necessity to provide air transportation services on the following segments: Atlanta, Georgia—Tokyo, Japan Honolulu, Hawaii—Tokyo, Japan Los Angeles, California—Tokyo, Japan Portland, Oregon—Tokyo, Japan Conforming Applications, Motions to Modify Scope and Answers may be filed by April 15, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-7019 Filed 3-22-85;8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Docket 42425]

Southwest Airlines Co. Enforcement Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on Thursday, April 4, 1985, at 9:30 a.m. (local time), in Room 5332, Nassif Building, 400 Seventh Street, SW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., March 20, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-7018 Filed 3-22-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 11]

Carlisle Insurance Co.; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Carlisle Insurance Company, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27251, July 2, 1984.

With respect to any bonds currently in force with Carlisle Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service (formerly Bureau of Government Financial Operations), Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2319.

Dated: March 5, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-6914 Filed 3-22-85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $208,000 has been established for the company.

Name of Company: First California Property and Casualty Insurance Company

Business Address: 23621 Park Sorrento, Suite 101, Calabasas, California 91302

State of Incorporation: California

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1984 Revision, at page 27253 to reflect this addition. Copies of the circular, when issued, may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226.

Dated: March 8, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-6915 Filed 3-22-85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $100,000 has been established for the company.

Name of Company: Far West Insurance Company

Business Address: 6301 Owensmouth Avenue, #340 Woodland Hills, CA 91367

State of Incorporation: California

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the

companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1984 Revision, at page 27253 to reflect this addition. Copies of the circular, when issued, may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226.

Dated: March 8, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-6916 Filed 3-22-85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds Gramercy Insurance Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $203,000 has been established for the company.

Name of Company: Gramercy Insurance Company

Business Address: P.O. Box 53256, Houston, TX 77052

State of Incorporation: Texas.

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1984 Revision, at page 27253 to reflect this addition. Copies of the circular, when issued, may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226.

Dated: March 18, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-6932 Filed 3-22-85; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Tax Forms Coordinating Committee; Request for Forms Suggestions

As part of its annual forms review process, the Internal Revenue Service is inviting written comments and suggestions for improving its tax return forms, instructions, and related schedules. The comments may apply to any tax form issued by the Internal Revenue Service. However, the Service would particularly appreciate specific suggestions on ways to reduce paperwork on the tax forms. The written submissions should be self-explanatory and in sufficient detail to communicate clearly what is being suggested. Careful consideration will be given to all comments and suggestions received. However, individual responses to the submissions will not be made because of the volume of correspondence expected.

In order to meet our work schedule and early printing deadlines, we request that written submission be received by June 3, 1985.

Comments and suggestions should be sent to the Chairman, Tax Forms Coordinating Committee, Room 5577, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Further information about this notice may be obtained by calling (202) 566-6150.

Dated: March 19, 1985.

Edmund I. Golwag,

Director, Tax Forms and Publications Division.

[FR Doc. 85-7023 Filed 3-22-85; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Finding of No Significant Impact; Mann Building Replacement; Michigan Veterans Facility; Grand Rapids, MI

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a replacement structure for the Mann Building at the Michigan Veterans Facility in Grand Rapids, Michigan. The estimated project cost is approximately $7.6 million. This is a magnitude estimate and is subject to revision.

This project involves the construction of a replacement facility to alleviate major violations of health, welfare, life safety and Veterans Administration codes in the existing structure. Recent trends in the use of the Mann Building have been toward nursing care for which the building is ill-suited, having been designed for domiciliary use.

Project impacts will involve construction activities affecting the immediate veteran-home environment; however, a new code-complying structure will allow for safe continuation of existing service to 160 veterans.

Construction related traffic may cause disruption of on-site traffic flow. In addition, construction noise associated with the development of the new nursing home facility is likely to cause annoyance to patients in the adjacent structure. The impact of dust and fumes that will exist during construction will be of short effect lasting only during that phase of project development. In relation to both construction and operation, the new facility will be built in accordance with applicable Federal, State and local air quality standards.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40, CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of that document may do so at the following office: Associate Deputy Administrator for Logistics, Room 601, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. (202/389-3544). Questions or requests for single copies of the Environmental Assessment may be addressed to the above.

Dated: March 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-7004 Filed 3-22-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 57
Monday, March 25, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

March 21, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 28, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Petition filed by United Satellite Communications, Inc. (USCI) requesting preemption of local zoning regulations of receive-only satellite earth stations. Summary: The Commission will consider a petition filed by USCI requesting preemption of local zoning regulations that USCI asserts unreasonably interfere with the right to construct and use receive-only satellite earth stations.

Common Carrier—2—Title: MCI Telecommunications Corporation Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service. Summary: The Commission will consider MCI's petition for a declaratory ruling that the Commission has preempted state and local regulation of the manner of determining quantities of usage on which to base charges for intrastate switched access service.

Common Carrier—3—Title: Notice of Proposed Rulemaking: Detariffing of Billing and Collection Services. Summary: The Commission will consider isssuing a notice of proposed rulemaking regarding the detariffing of billing and collection services.

Common Carrier—4—Title: Preemption of State Entry Regulation in the Public Land Mobile Service: Notice of Proposed Rulemaking. Summary: The Commission will consider a Notice of Proposed Rulemaking proposing to: (1) preempt state regulation that has the effect of prohibiting or impeding the entry of common carriers providing conventional paging or two-way mobile services; (2) forbear from all federal rate regulation of these carriers.

Common Carrier—5—Title: Notice of Proposed Rulemaking to detariff the installation and maintenance of inside wiring. Summary: The Commission will consider whether to institute a rulemaking proceeding to consider detariffing the installation and maintenance of inside wiring. Related issues are (1) whether the Commission should propose to detariff the maintenance of both simple and complex inside wiring; and (2) who should own wiring once it is fully amortized.

Common Carrier—6—Title: Memorandum Opinion and Order in CC Docket No. 78-72, Phase I, In the Matter of MTS and WATS Market Structure. Summary: The Commission will consider whether to affirm the modifications made to the access charge plan in the *Second Reconsideration Order.*

Mass Media—1—Title: Changes in AM Technical Rules to Reflect New International Agreements. Summary: The Commission issued a Notice of Proposed Rule Making in Docket 84-752 proposing to make a series of changes in AM technical rules to reflect new international agreements which have been or are being negotiated. The Report and Order resolves issues raised in this proceeding.

Mass Media—2—Title: AM Directional Antenna Proof of Performance Field Strength Measurements. Summary: The Commission will consider issuing a Notice of Proposed Rule Making to review its Rules that require AM broadcast licensees using directional antenna systems to perform proof of performance field strength measurements and that specify sampling systems for antenna monitors.

Mass Media—3—Title: Amendment of the Commission's Rules to Expand the Use of Automatic Transmission Systems for AM, FM, and Television Broadcast Stations. Summary: The Commission will consider a Notice of Proposed Rule Making to extend the provisions for automatic transmission systems, permitting such operation at directional AM, and television broadcast stations.

Mass Media—4—Title: Application for Review (CSR-2591(x)), filed November 30, 1984, by Western Communications, Inc. Summary: The Commission will consider whether to grant an application for review of the decision of the Chief of the Mass Media Bureau, dismissing a petition for waiver of Section 76.501(a)(2) of the Commission's Rules.

Mass Media—5—Title: License renewal application of Station WBUZ, Fredonia, New York; supplemental license renewal application; informal objection to the license renewal application and related pleadings; a supplemental informal objection and related pleadings; an application for consent to the assignment of the license of WBUZ; and a petition to deny the assignment application and related pleadings. Summary: The Commission considers whether to grant the license renewal applications and application to assign the license of Station WBUZ, Fredonia, New York or whether to designate the license renewal applications for an evidentiary hearing based upon allegations raised in the informal objections.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85-7104 Filed 3-21-85; 3:46 pm]
BILLING CODE 6712-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

March 20, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

TIME AND DATE: 10:00 a.m., March 27, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 810th Meeting—March 27, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 6376-000, Stockport Milling Company, Inc.
CAP-2.
Project No. 8321-000, Murray W. Thurston, Inc.
CAP-3.
Project No. 6434-005, Thomas A. Nelson
CAP-4.

Project No. 6441-003, South Fork Hydroelectric Association
CAP-5.
Project No. 472-005, Utah Power & Light Company
CAP-6.
Project No. 7188-000, the Public Service Company of New Hampshire and the New Hampshire Water Resources Board
CAP-7.
Project No. 7358-002, Salt Lake County Water Conservancy District
CAP-8.
Project No. 4684-001, Long Lake Energy Corporation
Project No. 5511-001, New York State Energy Research and Development Authority
CAP-9.
Docket No. ER85-264-000, Duquesne Light Company
CAP-10.
Docket Nos. ER85-156-001 and ER84-604-000, Southwestern Public Service Company
CAP-11.
Docket Nos. ER77-175-004 (remand), ER78-19-000 (Phase II), et al., and ER81-588-000, Florida Power & Light Company
CAP-12.
Docket No. ER84-359-002, Montana Power Company
CAP-13.
Docket Nos. ER83-396-000 and ER83-728-000, Northern Indiana Public Service Company

Consent Miscellaneous Agenda

CAM-1.
Omitted
CAM-2.
Omitted
CAM-3.
Docket No. RM79-76-236 (Texas—9 Addition VI), high-cost gas produced from tight formations
CAM-4.
Docket No. SA80-40-005, RJB Gas Pipe Line Company
CAM-5. Docket Nos. RA83-11-000 and RA83-13-000 (consolidated), Dow Chemical U.S.A. and Texas City Refining, Inc.
CAM-6. Omitted
CAM-7. Docket No. GP85-8-000, Forest Oil Corporation
CAM-8. Docket No. GP82-20-000, Public Service Company of Oklahoma
CAM-9. Docket No. GP82-14-000, Tenneco Oil Company

Consent Gas Agenda

CAG-1. Docket No. RP80-136-005, Southern Natural Gas Company
CAG-2. Docket No. RP85-60-001, Overthrust Pipeline Company
CAG-3. Docket Nos. TA85-2-62-000 and 001 (PGA85-2), Pacific Offshore Pipeline Company
CAG-4. Docket Nos. TA85-2-52-000, 001 (PGA85-2) and RP84-77-002, Western Gas Interstate Company
CAG-5. Docket Nos. TA85-2-42-000 and 001 (PGA85-2 & IPR85-2), Transwestern Pipeline Company
CAG-6. Docket Nos. TA85-2-34-000 and 001 (PGA85-2), Florida Gas Transmission Company
CAG-7. Docket Nos. TA85-2-33-000 and 001 (PGA85-2), El Paso Natural Gas Company
CAG-8. Docket Nos. TA85-2-31-000 and 001, Arkla Energy Resources Company
CAG-9. Docket Nos. TA85-2-7-000 and 001 (PGA85-2), Southern Natural Gas Company
CAG-10. Docket Nos. TA85-2-5-002 (PGA85-2a), RP85-102-000, TA85-3-5-000, 001 (PGA85-3) and TA85-3-5-002 (PGA85-3a), Midwestern Gas Transmission Company
CAG-11. Docket Nos. RP83-68-006, RP84-19-000, 001, RP85-12-001 and CP84-397-001, Natural Gas Pipeline Company of America
CAG-12. Docket No. RP85-111-000, Southwest Gas Corporation
CAG-13. Docket No. RP85-112-000, Boundary Gas, Inc.
CAG-14. Docket Nos. RP67-8-000 and AR61-1, et al., Transwestern Pipeline Company
CAG-15. Docket No. TA85-1-53-004, KN Energy, Inc.
CAG-16. Docket No. RP85-69-001, Penn-York Energy Corporation
CAG-17. Docket No. RP84-79-004, Gas Gathering Corporation
CAG-18. Docket No. TA85-1-22-000, Consolidated Gas Transmission Corporation
CAG-19. Docket No. RP85-33-000, Pacific Interstate Offshore Company
CAG-20. Docket Nos. ST81-258-002, ST81-437-001, ST82-127-001, ST84-81-000 and ST84-431-000, Liberty Natural Gas Company
CAG-21. Docket Nos. ST83-439-001, ST81-106-001, ST82-193-001, ST82-194-001, ST82-195-001, ST83-50-001, ST83-327-001, ST83-481-000, ST83-634-000, ST84-101-000, ST84-218-000, ST84-219-000, ST84-524-000, ST84-1138-000, ST85-70-000 and ST85-71-000, Producer's Gas Company
CAG-22. Docket Nos. ST81-207-003, ST81-269-001 and ST82-214-001, Monterey Pipeline Company
CAG-23. Docket No. ST81-193-002, Somerset Gas Service
CAG-24. Docket No. RI76-28-004, Arkansas Louisiana Gas Company *v.* Frank J. Hall, et al.
CAG-25. Docket Nos. RI74-188-049 and RI75-21-044, Independent Oil & Gas Association of West Virginia
CAG-26. Omitted
CAG-27. Docket No. CI85-244-000, Arkoma Production Company
CAG-28. Docket No. CI85-239-000, Samson Resources Company
CAG-29. Docket No. CI85-167-000, Chevron U.S.A. Inc.
CAG-30. Docket Nos. CP84-539-001 and 002, El Paso Natural Gas Company and Producer-Suppliers of El Paso Natural Gas Company
CAG-31. Omitted
CAG-32. Docket Nos. CP83-14-070 and 074, Northern Natural Gas Company Division of Internorth, Inc.
CAG-33. Docket No. CP84-400-000, Arkansas Louisiana Gas Company, a division of Arkla, Inc.
CAG-34. Docket No. CP84-544-000, Northwest Central Pipeline Corporation
Docket No. CP84-668-000, Northern Natural Gas Company, Division of Internorth, Inc.

I. Licensed Project Matters

P-1.
Docket Nos. EL80-19-000 and 004, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York
Docket Nos. EL80-24-000 and 002, Connecticut Municipal Electric Energy Cooperative v. Power Authority of the State of New York
Docket Nos. EL78-24-029, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
P-2.
Docket Nos. EL85-13-000, Georgia Power Company
P-3.
Omitted

II. Electric Rate Matters

ER-1.
Docket No. ER82-412-000, Kansas Gas and Electric Company

Miscellaneous Agenda

M-1.
Reserved.
M-2.
Reserved
M-3.
Docket Nos. RM83-72-001 through 009, first sales of pipeline production under section 2(21) of the Natural Gas Policy Act of 1978
Docket Nos. RM82-16-001 through 009, first sales by affiliates
M-4.
Docket No. GP80-43-005 (Phase II), Northern Natural Gas Company, Division of Internorth, Inc.

I. Pipeline Rate Matters

RP-1.
(A) Docket Nos. RP83-8-000 and 001, Columbia Gas Transmission Corporation v. Tennessee Gas Pipeline Company, a division of Tenneco, Inc., et al.
(B) Docket No. TA85-1-9-002 (PGA85-1, GRI85-1 and IPR85-1), Tennessee Gas Pipeline Company, a division of Tenneco Inc.

II. Producer Matters

CI-1.
Omitted

III. Pipeline Certificate Matters

CP-1.
Docket No. CP75-104-040, High Island Offshore System
CP-2.
Docket No. CP83-284-001, Southwest Gas Transmission Company

Docket No. CP83-376-001, El Paso Natural Gas Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7066 Filed 3-21-85; 11:24 am]

BILLING CODE 6717-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION

NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING.

TIME AND DATE: 9:40 a.m., Wednesday, March 19, 1985.

PLACE: 1776 G Street, NW., Washington, D.C., 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Settlement of Litigation.

The Board unanimously voted that the Agency business required that a meeting be held with less than the seven days advance notice.

The Board voted to close the meeting under exemption (9)(B). The General Counsel certified that the meeting could be closed under that exemption.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-7083 Filed 3-21-85; 12:35 pm]

BILLING CODE 7535-01-M

federal register

Monday
March 25, 1985

Part II

Office of Personnel Management

5 CFR Parts 293, 430, 530, et al.

Performance Management and Recognition System; Interim Rulemaking, With Comments Invited

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 430, 530, 531, 536, 540, 595, and 771

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments invited.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to implement the Performance Management and Recognition System (PMRS). This System, mandated by Title II of the Civil Service Retirement Spouse Equity Act of 1984, replaces the Merit Pay System for Federal supervisors and managers. The new System bases supervisors' and managers' pay and awards on their performance, and provides for a more extensive performance award system than in the past.

DATES:

Effective date: October 1, 1984.

Comment date: To be considered, comments must be received by May 24, 1985.

Due Date: OPM must receive Performance Management Plans 150 days before the end of the agency appraisal period.

Implementation date: Agencies must implement their Performance Management Plans 120 days before the end of the agency appraisal period.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director, Office of Performance Management/WED, Office of Personnel Management, 1900 E Street, NW., Room 7520, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632-5653.

SUPPLEMENTARY INFORMATION: The Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98-615, requires the establishment of the Performance Management and Recognition System (PMRS). This System replaces the Merit Pay System for Federal Government supervisors and management officials in grades GS-13 through GS-15.

Under the PMRS, Federal agencies will determine these managers' and supervisors' pay and awards based on their performance. At 5 U.S.C. 4302a and 5409, the law requires OPM to prescribe regulations to carry out the new System. These regulations supplement and implement chapters 43 and 54 of title 5, U.S. Code, and should be read together with those provisions of the law.

Following is a summary of the interim regulations.

Performance Management Plans

For initial implementation of the PMRS, agencies must submit PMRS Performance Management Plans to OPM 150 days before the end of the agency appraisal period. OPM will provide agencies with a Performance Management Plan Checklist, containing all the components necessary for approval of the PMRS Performance Management Plan. After OPM approval, agencies must implement the Plans no later than 120 days before the end of the appraisal period to assure that PMRS employees are under performance elements and standards for the 90-day minimum appraisal period.

For purposes of taking performance-based actions under 5 U.S.C. 4303, the agency's current performance appraisal plan will be in effect until OPM approves the performance appraisal segment of PMRS Performance Management Plans.

Beginning with the first pay period beginning in October 1985, pay increases will be based on performance ratings under the new Performance Management Plans.

Performance Appraisal—Part 430, Subpart D

1. A new Subpart D covers performance appraisal for GS-13 through GS-15 supervisors and management officials, the same employees who were covered under the Merit Pay System.

2. Each agency will develop a performance appraisal system(s) as part of its overall Performance Management Plan(s) for PMRS employees.

3. Agencies will be required to provide all covered employees and their supervisors with training and information on the performance appraisal process.

4. Performance appraisal results will be used to provide information to employees on their performance and how it may be improved. The results will also be used to provide accountability for, and evaluate accomplishment of, organizational goals and objectives at both the individual and organizational levels, as part of an integrated management system. Performance appraisal results will be used as a basis for employees' pay adjustments, performance awards, promotions, training, reductions in grade, reassignments, retention, and removal.

5. Performance appraisal systems will provide for:

—written performance elements and standards for each PMRS employee, developed by joint participation of the supervisor and the employee;

—performance standards written at the "Fully Successful" level for each performance element;

—critical and (as needed) non-critical performance elements. When non-critical elements are used, more weight must be given to critical elements than to non-critical elements when deriving a summary rating;

—a minimum of three rating levels for each element;

—five summary rating levels to be derived from element ratings. The five summary rating levels are:

Level 5 Two levels above "Fully Successful" (e.g., "Outstanding")
Level 4 One level above "Fully Successful" (e.g., "Exceeds Fully Successful")
Level 3 "Fully Successful", the expected level of performance
Level 2 One level below "Fully Successful" (e.g., "Minimally Successful")
Level 1 Two levels below "Fully Successful" (e.g., "Unacceptable")

6. Employees must receive level 1 summary performance ratings if their performance on one or more critical elements is rated:

—below "Fully Successful" in a system with only one element rating level below "Fully Successful", or

—at the second level below "Fully Successful" in a system with two element rating levels below "Fully Successful".

7. In systems where performance standards are not established at either level below "Fully Successful", employees performing below "Fully Successful" on one or more critical elements will have to be given a Performance Improvement Plan (PIP), and a new appraisal period (minimum 30 days) to improve their performance. The PIP will explain employee deficiencies and steps the employee must take to resolve these deficiencies. The PIP must communicate performance standards for at least one level below "Fully Successful" for the critical elements in which the employee was performing below "Fully Successful".

8. Agencies will generally rate employees annually; the minimum appraisal period is 90 calendar days.

9. Each employee's performance elements, standards, summary ratings, and performance-based personnel actions will be reviewed and approved by an official at a higher level than the appraising official. After higher level

review, performance ratings will be provided in writing to the employees.

10. Employees cannot appeal their ratings outside the agency; however, they have the right to reconsideration of their ratings upon their request by an agency official who is at a higher level than the appraising and reviewing officials.

11. When an employee is on detail for 120 or more days within his or her own agency, the agency is required to provide written elements and standards no later than 30 days after the detail begins. Agencies must rate employees' performance on these details and consider the ratings in deriving the employees' summary rating.

12. In rating those detailed outside their organization, agencies must make every effort to use performance information from those details. Requirements include:

—rating the employee if the employee served in the employing agency for the minimum appraisal period;

—obtaining and using performance information from the outside organization if the employee served there for the minimum appraisal period;

—designating the employee "unrateable" if a current rating cannot be prepared.

Performance Management and Recognition System (PMRS)—Part 540

1. This new Part 540 replaces the regulations on the Merit Pay System; it covers the same employees (supervisors, managers, and management officials in GS–13 through GS–15 positions) who were covered under merit pay.

2. The President may exclude an agency, a unit in an agency, or any class of employees from the System. OPM may exclude any employee from the System. Agencies not covered by 5 U.S.C. chapter 43 must establish equivalent performance appraisal systems for making performance pay decisions, in accordance with guidance issued by OPM.

3. Performance-based pay decisions must be based on an employee's summary performance rating for the most recent appraisal period. Appraisal periods must end not earlier than June 30 and not later than September 30 of each year. Each agency must manage the performance appraisal process to assure equitable performance pay for each employee.

4. Agencies must establish procedures for determining performance pay decisions (total amount of general increases, merit increases, and performance awards), in accordance with OPM instructions. Agencies must provide for a higher level of review of these pay decisions.

5. PMRS employees rated at level 3 ("Fully Successful") or above will receive full general pay increases (comparability) under Part 540. Employees rated at level 2 will receive one-half of the general increase, and employees rated at level 1 will receive no general increase. Under this provision, employees rated below "Fully Successful" can receive a rate below the minimum of the pay range for their grade.

6. PMRS employees will receive all or part of a merit increase (an amount equal to the dollar value of a within-grade increase in the General Schedule), depending on their level of performance. Employees in the lower third of the pay range (below the equivalent of step 4 for the grade) will receive a full merit increase if they are rated at level 3 ("Fully Successful") or above. Employees in the upper two-thirds of the pay range (at or above the equivalent of step 4 for the grade) will receive a full merit increase if they are rated at level 5 ("Outstanding"), one-half merit increase if they are rated at level 4 ("Exceeds Fully Successful"), and one-third merit increase if they are rated at level 3 ("Fully Successful"). Employees rated below level 3 will receive no merit increase.

7. The regulations provide procedures for paying merit increases to emploiyees who cannot be rated, who return to pay status after approved absences, including military and other leave status, and for simultaneous pay actions.

8. In FY 85, agencies must pay covered employees performance awards at a minimum of .75 percent of their estimated annual payroll for employees covered by the PMRS, increasing incrementally to a minimum of 1.15 percent in FY 89. After the regulations are implemented, OPM will provide guidance on the amount of the incremental increases. There is a maximum of 1.5 percent of PMRS payroll in any fiscal year. The annual payroll estimate is to be derived from such considerations as: the number of employees covered the previous year, their aggregate basic pay, anticipated significant changes in the number of PMRS employees during the current fiscal year, and the amount of general increases and merit increases that will be paid in the current fiscal year.

9. Agencies are required to give employees rated at level 5 ("Outstanding") a performance award of at least 2 percent of their base pay (except in FY 85), but not more than 10 percent annually. An agency head may grant awards up to 20 percent of base pay for "unusually outstanding performance." Agencies should give performance awards of not more than 10 percent to employees rated at level 4. Agencies may give awards to employees rated at level 3, not to exceed 10 percent annually. Within each organizational element of an agency having responsibility for managing a performance award budget, awards granted to employees in the same grade rated at level 4 must be less than those received by employees rated at level 5, and awards granted to employees rated at level 3 must be less than those received by employees rated at level 4. An exception to these rules is provided in the case of an employee promoted within the previous year.

10. The cash award program provides cash awards for employees whose suggestions, inventions, superior accomplishments, special acts or services, or other unique personal efforts contribute to the efficiency, economy, or other improvements to Government operations. These awards will be granted in accordance with the provisions of Part 451, Incentive Awards.

Pay Administration—Part 531

The regulations provide that the merit increase is an "equivalent increase" for the purposes of pay administration.

Personnel Records—Part 293

The regulations require agencies to file PMRS employees' performance ratings and the performance plans on which the ratings are based in their Official Personnel Folder (OPF) and to send these ratings in the OPF to the "gaining" agency when the employee transfers.

Over a period of several years, agencies have indicated that they need performance ratings of transferred employees to make determinations about within-grade and step increases, reductions in force, and other personnel actions for those employees. This need will be compounded under the PMRS, where ratings are needed for general (comparability) increases as well as merit increases. Because the current personnel records regulations prohibit agencies from transferring performance ratings on non-SES employees to another agency or to the National Personnel Records Center (NPRC) in an employee's OPF, we are revising those regulations to allow transfer of PMRS ratings.

The regulations now require that agencies place performance ratings in an employee's OPF and forward the

ratings to another "gaining" office within the employing agency, to another agency, or to the NPRC. This change would only affect PMRS employees' ratings which are 3 years old or less.

Technical Changes

Parts 530, 531, 536, 595, and 771 are being amended to make technical and conforming changes such as nomenclature changes from Merit Pay System terminology to Performance Management and Recognition System terms or legal citations:

Waiver of Notice of Proposed Rulemaking and the 30-Day Delay of Effectiveness Date

I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delay of effectiveness date under 5 U.S.C. 553 (b) and (d). Congress has provided that Pub. L. 98-615 is retroactive to October 1, 1984, and, accordingly, these regulations must govern the same period.

Agencies must have the rules in effect to implement the Performance Management and Recognition System, under which certain actions are required to be taken on the first day of the first pay period in October 1984.

E.O. 12291 Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 430

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 530

Government employees, Wages.

5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 540

Government employees, Wages.

5 CFR Part 595

Government employees, Health professions, Wages.

5 CFR Part 771

Government employees, Administrative practice and procedure.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

PART 293—PERSONNEL RECORDS

1. Section 293.304 is revised to read as follows:

Subpart C—Official Personnel Folder

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code, and current performance ratings of record, including the performance plans on which the ratings were based, for each employee covered under the Performance Management and Recognition System under Part 540 of this chapter. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293-31.

2. Section 293.306(b) is revised to read as follows:

§ 293.306 Use of existing folders upon transfer or reemployment.

* * * * *

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for PMRS employees' performance ratings of record including the performance plans on which the ratings were based; and

(2) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293-31.

3. Section 293.402(a) is revised to read as follows:

Subpart D—Employee Performance File System Records

§ 293.402 Establishment of seperate employee performance record system.

(a) Copies of PMRS employees' performance ratings of record, including the performance plans on which the ratings are based, must be placed in the employee's Official Personnel Folder (OPF). However, ratings for all other employees, and all other performance-related documents, may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. PMRS performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

* * * * *

4. Sections 293.404 (a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance appraisals or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long (up to 3 years) as the agency deems appropriate;

(iii) Performance records superseded, e.g., through an administrative or judicial procedure, and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with PMRS employees, shall be as agencies prescribe, consistent with § 293.405(a).

* * * * *

5. Section 293.405(a) is revised to read as follows:

§ 203.405 Disposition of records.

(a) When the OPF of a PMRS employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plans on which the ratings were based. Also, the "losing" office will purge from the OPF all performance ratings more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293–31.

* * * * *

(Authority: 5 U.S.C. 552a and 5 U.S.C. 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954–1958 Comp.; 5 CFR 7.2; E.O. 9830, 3 CFR 1943–1948 Comp.)

6. In Part 430, Subparts A and C are removed and reserved; the headings for Part 430 and Subparts A through C are revised; and a new Subpart D is added, to read as follows:

PART 430—PERFORMANCE MANAGEMENT

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employees

* * * * *

Subpart C—Performance Awards [Reserved]

Subpart D—Performance Appraisal for the Performance Management and Recognition System

Sec.

Authority: 5 U.S.C. 4302a and 4305.

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employee

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Subpart C—Performance Awards [Reserved]

Subpart D—Performance Appraisal for the Performance Management and Recognition System

§ 430.401 Statutory authority.

Title 5, U.S. Code, section 4302a provides for the establishment of performance appraisal systems for Performance Management and Recognition System (PMRS) employees. This subpart contains regulations which the Office of Personnel Management has prescribed for Performance Appraisal under the Performance Management and Recognition System, and implements and supplements the provisions of 5 U.S.C. 4302a.

§ 430.402 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems for Performance Management and Recognition System employees are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives;

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(c) Evaluating and improving individual and organizational accomplishments; and

(d) Using the results of performance appraisal as a basis for adjusting base pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.403 Coverage.

(a) *Employees and agencies covered by statute.* This subpart applies to any supervisor or management official, as defined in 5 U.S.C. 7103 (a)(10) and (a)(11), who is in a position within grades GS–13, GS–14, or GS–15 of the General Schedule and covered by Part 540 of this chapter.

(b) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(c) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.404 Definitions.

In this subpart, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s). This includes oral or written progress reviews.

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contribute toward accomplishing organizational goals and objectives and which is of such importance that, unacceptable performance on the element would result in unacceptable performance in the position.

"Non-critical element" means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal.

"Performance" means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

"Performance Appraisal System". (See Appraisal System.)

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and incentive systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The performance management plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by § 430.411 of this subpart and § 540.111 of this chapter.

"Performance plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Rating" means:

(1) The written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.405 (h) and (i) of this subpart); or

(2) The written notice at any time that an employee's performance is unacceptable on one or more critical elements.

"Rating of record" means the rating required at the time specified in the performance management plans or at such other times as the plan specifies for special circumstances.

§ 430.405 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by the Performance Management and Recognition System.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in § 430.405(i), must be assigned.

(c) Each appraisal system must provide for the joint participation of the supervising official and the employee in developing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval. Final authority for establishing such plans rests with the supervising officials.

(d)(1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employees' positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, workplans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall require that performance plans must be related to the employee's assigned work. Employees must be appraised against established standards.

(g) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than the appraising official.

(h) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(i) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful". For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(j) Each appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to: formal training, on-the-job training, counseling, and closer supervision.

(k) Except with respect to employees occupying positions in Schedule C as authorized by § 213.3301 of this chapter,

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee rated "Unacceptable", but only after affording the employee a reasonable opportunity to improve performance to the "Fully Successful" level or higher on the critical element(s) rated "Unacceptable", as required in 5 U.S.C. 4302a(b)(6).

(2) If, by the conclusion of the opportunity period referred to in paragraph (k)(1) of this section, a rating of "Fully Successful" cannot be assigned on the element(s), the agency must initiate reassignment, reduction in grade or removal, as required in 5 U.S.C. 4302a(b)(6), and, with respect to reduction in grade or removal, subject to the provisions of 5 U.S.C. 4303.

§ 430.406 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating shall be prepared. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year except for employees currently under a PIP, as provided in § 430.406(f). Systems shall provide for preparing a rating when an employee changes positions during the rating period, if the employee has served for the minimum appraisal period in the position from which he/she has changed; agency performance management plans must describe how these ratings will be included in the rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of 90 days.

(c) *Appraisal of each element.* An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in

deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating using appraisal information obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

(f) *Performance Improvement Plan (PIP).* (1) The requirements of this paragraph apply only to agencies using appraisal systems that have not established written performance standards at either of the two levels below "Fully Successful".

(2) If at any time an employee's performance is determined to be below "Fully Successful" on one or more critical elements, the agency must issue a written notice to the employee informing the employee that his/her performance is below "Fully Successful". this shall constitute a rating at level 2 for pay purposes under §§540.106 and 540.107 of this chapter.

(3) An agency must start a new appraisal period for a minimum of 30 days which is not an opportunity period under Part 432 of this chapter. At the beginning of the new appraisal period, agencies must provide a Performance Improvement Plan to each employee who has been determined to be below "Fully Successful" on one or more critical elements. The PIP must:

(i) Explain the employee deficiencies;

(ii) Explain steps to be taken in an attempt to resolve the deficiencies; and

(iii) Communicate performance standards for at least one level below "Fully Successful" for those critical elements where performance has been determined to be below "Fully Successful".

(4) At the end of the new appraisal period, the employee shall be rated on the elements included in the PIP. This rating shall replace the rating assigned under paragraph (f)(2) of this section.

(g) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.407 Ratings.

(a) *Written Rating.* A written rating must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings and performance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than the appraising official. Ratings may not be communicated to employees prior to approval by the final reviewer.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, in order to provide for the equitable distribution of merit increases and performance awards under the PMRS, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's performance management plan.

(e) *Reconsideration process.* Upon request by the employee, his or her rating shall be reconsidered. The employee must be given the right to a reconsideration by a person at a higher level in the organization than the appraising, reviewing, or approving official. The procedures for review of a rating shall be in accordance with Part 771 of this chapter.

(f) *Inability to rate.* (1) When an agency cannot prepare a rating for the current appraisal period, an employee shall be designated "unrateable" for all purposes other than reduction-in-force (RIF) and pay determinations.

(2) When an employee is designated "unrateable", the employee's rating of record may be extended for no longer than one appraisal period. An extended rating may be used as a basis for a merit increase or performance award as provided in §§ 540.107 through 540.109 of this chapter.

(3) An employee who is designated "unrateable" shall be given a rating before a RIF if the employee has served for the minimum appraisal period before the general notice of RIF has been issued.

(g) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by §293.405(a) of this chapter. The rating of record must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.408 Performance standards review boards.

(a)(1) Each agency shall establish one or more performance standards review boards. Each board will consist of six members chosen by the agency head or his or her designee. One-half of the board must be composed of employees covered by the PMRS and in the competitive service. The chair of the board will be chosen by the head of the agency or his or her designee.

(2) Agency performance management plans shall set forth the composition and operating procedures for the board(s). Boards shall become operational upon OPM's approval of the agency's performance management plan and shall report to their respective agency heads or designees at least annually.

(3) The board(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The board shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans.

(4) Boards shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the equitable application of standards but shall not recommend any distribution of ratings.

(5) Boards are also responsible for studying the feasibility of organizational awards and providing technical assistance on any demonstration projects on performance appraisal.

§ 430.409 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to

supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as neeeded.

§ 430.410 OPM review of performance appraisal systems.

(a) The Office of Personnel Management (OPM) will review performance appraisal systems to determine if they conform to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of Subchapter I of 5 U.S.C. 43 or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the systems. The agency shall take any action so required.

§ 430.411 Performance appraisal plans.

(a) Agencies must submit proposed performance appraisal system to OPM for approval as part of the performance management plans required at § 540.111 of this chapter. If major subcomponents of an agency propose to modify any element of the agency's system that is included in the Performance Management Plan Checklist, as provided in §540.111(b)(1), or develop a separate proposed system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(b) Agencies shall submit to OPM for approval any changes to their performance appraisal plans that modify any element of the agency's system that is included in the Performance Management Plan Checklist.

§ 430.412 Reports.

So that the Office of Personnel Management can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System and performance management plans including the performance appraisal systems, each agency shall maintain such records and submit to OPM such reports as OPM may require.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

7. In § 530.305, paragraph (d) is amended by removing the words "Merit Pay System" and inserting, in their place, the words "Performance Management and Recognition System", and paragraph (a)(3) is revised to read as follows:

§ 530.305 Determining employee rates.

(a) * * *

(3) When a special rate range becomes initially applicable to, or increased for, a position occupied by an employee covered by the Performance Management and Recognition System, the employee's rate of basic pay shall be determined under § 540.106 of this chapter.

* * * * *

8. In § 530.306, paragraph (b)(4) is added, and § 530.307(b) is removed. The new § 530.306(b)(4) reads as follows:

§ 530.306 Discontinuing special rates.

* * * * *

(b) * * *

(4) If the employee is receiving a rate of basic pay established under Part 540 of this chapter, the employee shall retain his or her existing rate, except that his or her rate shall be set at the minimum rate of the employee's grade in the general schedule under the following circumstances:

(i) The existing rate is below the minimum rate of the regular schedule; and

(ii) The employee's most recent performance rating, determined under Subpart D of Part 430 of this chapter, is at level 3 or above.

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

9. § 531.201 is revised to read as follows:

§ 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply to employees and positions, other than Senior Executive Service positions, to which chapter 51 of title 5 applies, including employees under the Performance Management and Recognition System (PMRS) established under chapter 54 of title 5, United States Code.

10. In § 531.203, paragraph (c) is amended by removing the words "Merit Pay System" and inserting in their place, the words "Performance Management and Recognition System," and the headings for paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 531.203 General provisions.

* * * * *

(c) * * *

(1) *For non-PMRS employees.*

* * * * *

(2) *For PMRS employees.*

* * * * *

11. In § 531.204, paragraph (a) is amended by removing the words "Merit Pay System" and inserting, in their place, the words "Performance Management and Recognition System," and paragraphs (c) and (d) are revised to read as follows:

§ 531.204 Special provisions.

* * * * *

(c) *Pay adjustment on acquiring PMRS status.* When an employee acquires PMRS status, the employee shall receive his or her existing rate of basic pay plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any statutory adjustment in the General Schedule made on that date, or in the case of an employee subject to special pay rates, the amount of any adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any within-grade or quality step increase to which the employee otherwise would be entitled on that date; and

(3) The amount resulting from a promotion effective on that date.

(d) *Pay adjustment on loss of PMRS status.* When an employee loses PMRS status, the employee shall receive his or her existing rate of basic pay, plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any general pay increase under section 5403 of title 5, United States Code, and § 540.106 of this chapter to which the employee otherwise would be entitled on that date, or in the case of an employee subject to special pay rates, the amount of any pay adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any merit increase under section 5404 of title 5, United States Code, and § 540.107 of this chapter to which the employee otherwise would be entitled on that date;

(3) The amount resulting from a promotion effective on that date;

(4) In the case of an employee whose resulting rate of basic pay falls between two steps of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between the two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the rate for the next higher

step of that grade (or special rate range); and

(5) In the case of an employee whose resulting rate of basic pay falls below the minimum rate of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the minimum rate for that grade (or special rate range).

12. In § 531.205, paragraph (a)(2) is revised to read as follows:

§ 531.205 Pay schedule conversion rules at the time of a pay adjustment under 5 U.S.C. 5305 or 5 U.S.C. 5303.

(a) * * *

(2) If an employee is receiving basic pay immediately before the effective date of his or her pay adjustment at a rate determined under chapter 54 of title 5, United States Code, and part 540 of this chapter, the employee shall have his or her rate of basic pay as adjusted under section 5403 of that title and § 540.106 of this chapter.

* * * * *

§§ 531.305 and 531.402 [Amended]

13. Sections 531.305(a)(1) and 531.402(c)(1) are amended by removing the words "Merit Pay System" and inserting, in their place, the words "Performance Management and Recognition System."

14. In § 531.407, paragraph (c)(1) is revised and a new paragraph (d) is added, to read as follows:

§ 531.407 Equivalent increase determinations.

* * * * *

(c) * * *

(1) A statutory pay adjustment, including a general pay increase made under section 5403 of title 5, United States Code, but not including a merit increase made under section 5404 of that title;

* * * * *

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of a merit increase made under section 5404 of title 5, United States Code, and § 540.107 of this chapter is an equivalent increase.

PART 536—GRADE AND PAY RETENTION

15. In § 536.102, the definition of "representative rate" is amended by removing the words "merit pay system" and inserting, in their place, the words "Performance Management and Recognition System."

16. Part 540 is revised to read as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

Sec.

Authority: 5 U.S.C. Chapters 43 and 54.

§ 540.101 General.

Chapter 54 of title 5, United States Code (5 U.S.C. 5401–5410), provides for a Performance Management and Recognition System (PMRS) to recognize and reward quality performance by supervisors and management officials (as defined in 5 U.S.C. 7103(a) (10) and (11)) in positions classified in GS–13, 14, or 15. This part contains the regulations which the Office of Personnel Management (OPM) has prescribed for the Performance Management and Recognition System, and supplements the provisions of 5 U.S.C. 4302a, and 5401–5410.

§ 540.102 Definitions.

In this part:

"Agency" has the meaning given it in 5 U.S.C. 5102, but does not include the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the United States Courts.

"Employee" means a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11) in positions classified in grades GS–13, GS–14 and GS–15.

"General pay increase" means that portion of the pay adjustment under 5 U.S.C. 5305 (or for special salary rate employees, any adjustment under 5 U.S.C. 5303) granted to PMRS employees based on performance.

"Merit increase" means the increase in basic pay for a PMRS employee granted under 5 U.S.C. 5404 which is equivalent to one-ninth of the difference between the maximum rate of the grade or special rate range and the minimum rate of the grade or special rate range.

"Pay adjustment period" means the period beginning on the first day of the first pay period applicable to the employee starting on or after the first day of the month in which an adjustment would take effect under 5 U.S.C. 5303 or 5 U.S.C. 5305 and ending at the close of the day preceding the beginning of the following pay adjustment period.

"Performance award" means a performance-based cash payment to a PMRS employee made under 5 U.S.C. 5406. A performance award does not increase base pay.

"Performance award budget" means the amount of money allocated by an agency for distribution as performance awards to covered employees.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and incentive systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

"Performance pay decision" means the determination of the total amount of the general pay increase, merit increase, and performance award to be granted to an employee made by the officials also responsible for making the performance appraisal decisions, in accordance with OPM instructions.

"Rating" means: (1) The written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.405(h) of this chapter); or (2) the written notice at any time an employee's performance is unacceptable on one or more critical elements.

"Rating of record" means the rating required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances.

"Reference amount" means the dollar amount equal to the fourth step of a General Schedule grade, or, in the case of a special rate range established under 5 U.S.C. 5303 and Part 530 of this chapter, the fourth step of such special rate range.

§ 540.103 Ranges of basic pay and employee coverage.

(a)(1) The range of annual rates of basic pay for each grade of the Performance Management and Recognition System shall be the same as the range of annual rates of basic pay for the corresponding grade of the General Schedule, or of a special salary rate range established under 5 U.S.C. 5303, except that an employee may be paid less than the minimum rate of basic

pay of the grade or special rate range of the employee's position to the extent that payment of the lesser amount is the result of a performance evaluation of less than "Fully Successful".

(2) No PMRS employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate for the range of basic pay applicable to the employee's position as specified in paragraph (a)(1) of this section, except in connection with retained pay, as provided in 5 U.S.C. 5363.

(b)(1) In accordance with the definitions in 5 U.S.C. 7103(a) (10) and (11), the head of each agency shall identify employees who are supervisors or management officials for purposes of coverage under the Performance Management and Recognition System.

(2) Employees who were appointed on the effective date of a pay adjustment under 5 U.S.C. 5303 or 5 U.S.C. 5305 and whose pay was set in accordance with the newly adjusted pay range for their grade are not to be considered covered by the Performance Management and Recognition System on that day for the purposes of granting general pay increases, merit increases or performance awards under section 5403, 5404, or 5406 of title 5, United States Code.

(c)(1) The head of an agency may request that the President exclude an agency, any unit of an agency, or any class of employees within any such unit from the PMRS. Such request must be filed with the Director, Office of Personnel Management, in writing, and must set forth the reasons why the agency, unit or class should be excluded.

(2) The head of an agency may request that OPM exclude an employee from the PMRS. Such request must be filed with the Office of Personnel Management in writing, and must set forth the reasons why the employee should be excluded.

§ 540.104 Performance Management and Recognition System performance ratings.

(a) Except as provided in paragraph (d) of this section and § 540.105(c) of this part, each performance pay decision shall be based on the employee's summary performance rating for the most recent appraisal period made under a performance appraisal system as defined in Part 430 of this chapter, approved by the Office of Personnel Management under 5 U.S.C. 4302a, or an equivalent performance appraisal system. If the agency determines it is appropriate to do so, performance pay decisions may also take into consideration the accomplishments of the employee's organization.

(b) The performance appraisal period on which the performance pay decision is based should be as close to the pay adjustment period as the agency deems practicable, but will not end earlier than June 30 nor later than September 30 of the same year, or such other dates prescribed by OPM.

(c) Each agency shall establish procedures to manage the performance appraisal process for employees covered by the Performance Management and Recognition System, such as reviews of standards and ratings for difficulty and strictness of application, to obtain equitable and appropriately sized performance pay amounts for each employee.

(d) Agencies and employees subject to the Performance Management and Recognition System, but not covered by chapter 43 of title 5, U.S.C., shall meet minimal performance appraisal requirements issued by OPM. Performance appraisal systems established under this paragraph shall, for purposes of this subpart, be equivalent to performance appraisal systems established under 5 U.S.C. 4302a.

§ 540.105 Performance recognition.

(a) Each agency shall establish a procedure for determining the manner by which general increases, merit increases and performance award shall be granted to PMRS employees, in accordance with instructions provided by OPM.

(b) Agency procedures for making performance pay decisions must include a requirement for an approval of each decision by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) with responsibility for managing the performance award budget within the agency.

§ 540.106 General pay increases.

(a) General pay increases are to be made effective on the first day of the pay adjustment period.

(b) Except for paragraph (d) of this section, each general pay increase must be based on a summary performance rating under a performance appraisal system approved by the Office of Personnel Management. The following table prescribes the portion of the general pay increase employees must receive for each performance level, as defined in § 430.405(i) of this chapter.

GENERAL PAY INCREASES FOR EACH PERFORMANCE RATING LEVEL

If an employee's performance it rated at	Then the employee receives
Level 5, 4, or 3	The full general pay increase for the pay adjustment period.
Level 2	One-half the general pay increase for the pay adjustment period.
Level 1	No general pay increase for the pay adjustment period.

(c)(1) To determine the amount of the employee's general pay increase, the agency must use the employee's rate of basis pay on the day immediately preceding the pay adjustment period.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, the agency will determine the general pay increase for employees at performance level 3 (Fully Successful) or above as follows:

(A) Subtract the minimum rate of the rate range of the employee's position in effect on the day immediately preceding the pay adjustment period from the employee's rate of basic pay as determined under paragraph (c)(1) of this section;

(B) Subtract the minimum rate of the rate range in effect immediately preceding the pay adjustment period from the maximum of that rate range;

(C) Divide the result of paragraph (c)(2)(i)(A) by the result of paragraph (c)(2)(i)(B);

(D) Subtract the minimum rate of the new rate range for the grade from the maximum rate of that range;

(E) Multiply the result of paragraph (c)(2)(i)(C) by the result of paragraph (c)(2)(i)(D); and

(F) Add the result of paragraph (c)(2)(i)(E) to the minimum of the new rate range and round to the next higher whole dollar amount.

(ii) The salary of an employee which is at the minimum or maximum of the rate range in effect on the day immediately preceding the pay adjustment period will be adjusted to the minimum or maximum of the new rate range respectively.

(3) An employee whose performance is rated at level 1 or 2 and, therefore, receives less than the full general increase may be paid less than the minimum rate of the rate range for the employee's position.

(4)(i) Except as provided in paragraph (c)(4)(ii) of this section, the salary of an employee whose performance is rated at level 2, including an employee whose rate of basic pay is less than the minimum rate of the rate range for the employee's position, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding

the pay adjustment period by one-half of the amount of the general increase applicable to the rate range for the grade of the employee's position for such pay adjustment period.

(ii) An employee who is receiving retained pay will receive one-half of the general increase as required under 5 U.S.C. 5363(a), regardless of his or her summary rating level.

(d) Agencies will increase the salary of employees who cannot be rated under a performance appraisal system established under 5 U.S.C. 4302a by the amount of the full general pay increase.

§ 540.107 Merit increases.

(a) Merit increases under 5 U.S.C. 5404 are to be effective on the first day of the first applicable pay period commencing on or after October 1 of each year. Merit increases may be paid retroactively but must be received by the employee no later than December 31 of the applicable year.

(b) PMRS employees whose performance is rated at level 3 (Fully Successful), or levels 4 or 5 above the "Fully Successful" level, as defined in § 430.405(i) of this chapter, shall receive merit increases in accordance with the following table.

MERIT INCREASES FOR EACH PERFORMANCE RATING LEVEL

Performance rating	Amount received if rate of basic pay is less than the reference amount	Amount received if rate of basic pay is equal to or greater than the reference amount
Level 5	1 merit increase	1 merit increase.
Level 4	1 merit increase	½ merit increase.
Level 3 (fully successful).	1 merit increase	⅓ merit increase.

(c) PMRS employees whose performance is rated at levels 1 or 2 will receive no merit increase.

(d) An employee newly appointed to the Government for less than the 90-day minimum appraisal period shall not be eligible for a merit increase. For the purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(e) If an employee moving into the PMRS on or before the effective date of the merit increase has received an increase to base pay (promotion, within-grade increase, Quality Step Increase) within 90 days of such effective date, the employee will not receive a merit increase for that fiscal year. An increase occurring on the effective date of the merit increase is considered to be within this 90 day period. Actions covered by this rule include:

(1) Conversion to the PMRS;

(2) Reassignment to the PMRS from another Federal pay system;

(3) Promotion to the PMRS;

(4) Temporary promotion to the PMRS.

(f) When an employee's performance cannot be appraised for the 90 day minimum appraisal period, merit increases will be granted in accordance with the provisions of § 540.108 (a), (c), or (d) of this part.

§ 540.108 Special provisions for pay administration.

(a)(1) This paragraph applies when an employee cannot be rated under elements and standards established under 5 U.S.C. 4302a, under the following circumstances:

(i) An employee who is under elements and standards, established under 5 U.S.C. 4302a, for less than the 90 day minimum appraisal period (e.g., by reason of conversion, reassignment, promotion), except as provided in § 540.107(e) of this part; or

(ii) An employee who is unable to be rated because the supervisor has left the agency, and higher level supervisors cannot reasonably appraise the performance of the employee; or

(iii) An employee who is on long-term training.

(2) Under these circumstances, a merit increase shall be granted using one of the following rules in the order specified:

(i) The employee's rating period is extended to provide a minimum appraisal period, such extension not to exceed September 30 of the same year;

(ii) The employee's rating of record under 5 U.S.C. 4302 or 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or,

(iii) The employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(b) Except as provided in paragraph (c) of this section, when an employee who cannot be rated returns to a pay status after an approved absence that would be creditable service under 5 CFR 531.406, which included one or more pay adjustments provided under 5 U.S.C. 5403 and 5404, the employee's rate of basic pay shall be set at the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her employment with the agency; and, as appropriate;

(2) The general pay increases that would have been required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(3) The merit increases received by an employee rated at level 3 ("Fully Successful").

(c)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Service in the armed forces or non-Government service referenced in 5 U.S.C. 5405(d);

(ii) Other service for which an employee's advancement through the pay range is preserved by statute; or

(iii) One or more merit increases that occurred during a period for which the employee has received credit under the back day provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter.

(2) Under these circumstances, the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the interruption of his or her duty status, and, as appropriate;

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(iii) Merit increases, which will be granted as follows:

(A) For the first merit increase during the period of such service, the employee's rating of record under 5 U.S.C. 4302 or 4302a is extended and the appropriate increase is granted.

(B) For all subsequent merit increases. the employee will receive the increase equivalent to that received for a level 3 ("Fully Successful") rating for the period involved.

(d) Notwithstanding § 531.203(f) of this chapter, when an employee is promoted within or out of the PMRS on the effective date of the general increase *and* the merit increase, the employee shall receive the following, in the order specified:

(1) Any general increase to which the employee otherwise would be entitled;

(2) Any merit increase to which the employee otherwise would be entitled; and

(3) The increase resulting from the promotion.

§ 504.109 Performance awards.

(a) Section 5406 of title 5, United States Code authorizes the payment of performance awards as part of the Performance Management and Recognition System.

(b)(1) Each agency covered by the Performance Managemet and Recognition System shall, at the beginning of each fiscal year, determine the amount of money available for performance awards for that fiscal year in accordance with the requirements of 5 U.S.C. 5406(c) and instructions provided by OPM. Except as provided in paragraph (b)(3) of this section, the following funding requirements apply:

(i) Each agency is required to pay a minimum of .75 percent of the estimated aggregate amount of PMRS employees' basic pay for fiscal year 1985 for performance awards;

(ii) In each of the four fiscal years thereafter, the minimum percentage to be spent for performance awards will be adjusted in accordance with FPM instructions so that for fiscal year 1989 a minimum of 1.15 percent is spent;

(iii) An agency may not spend more for performance awards than 1.5 percent of the estimated aggregate amount of PMRS employees' basic pay for any fiscal year.

(2) In determining the estimated aggregate amount of PMRS employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered by the PMRS during the previous year (or the Merit Pay System in FY-84);

(ii) The aggregate rates of basic pay for such employees;

(iii) Significant change in the number of PMRS employees expected in the current fiscal year, such as by attrition, reorganization, expansion, or reduction in force; and

(iv) The distribution of performance ratings in the agency;

(v) The amount of the general increases and merit increases that will be paid to PMRS employees in the current fiscal year.

(3) Agencies having 20 or fewer employees covered by the PMRS and that have determined that the funding allowed under 5 U.S.C 5406(c)(2)(A) is insufficient to provide an effective performace awards distribution, may submit to OPM, at the beginning of each fiscal year, a request for approval of a higher level of funding for performance awards, but not to exceed 10 percent of the aggregate amount of basic pay for PMRS employees in that fiscal year as provided in 5 U.S.C. 5406(c)(2)(B). The request shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a minimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Award amounts that would be payable under paragraph (b)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(c) Performance awards shall be paid at least annually in accordance with 5 U.S.C. 5406(c)(2) and OPM instuctions, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the performance appraisal period as the agency deems practicable. This does not preclude agencies from granting cash awards under 5 U.S.C. 5407 and § 540.110 of this part at any time during the appraisal period.

(d) Performance awards must be based on an employee's summary rating. An employee with a summary rating at level 5 for the current appraisal period must receive a performance award of at least 2 percent of base pay (except that no minimum shall be applicable in fiscal year 1985), but not more than 10 percent of base pay in any given year. Based upon an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(e) An employee with a summary rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organization element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees rated at level 5.

(f) An employee with a summary rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(g)(1) In granting performance awards as provided in paragraphs (d), (e), and (f) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan. However, any employee receiving a summary rating of "Outstanding" must receive an award of no less than 2 percent of base pay (except that no minimum shall be applicable in Fiscal Year 1985).

(2) Performance awards that have been adjusted because of recent promotions will not be considered in meeting the requirements of paragraphs (e) and (f) of this section.

(h) The agency head will determine whether an employee who cannot be rated for the current appraisal period will be granted a performance award.

(i) Failure of an agency to pay a performance award under this section as authorized by 5 U.S.C. 5406(b) may not be appealed.

§ 540.110 Cash award program.

(a) Title 5, U.S. Code, section 5407 authorizes a cash award program for:

(1) Suggestions, inventions, superior accomplishments, or other unique personal efforts which contribute to the efficiency, economy, or other improvement of Government operations, or achieve a significant reduction in paperwork; or

(2) The performance of a special act or service in the public interest, in connection with or related to the employee's Federal employment.

(b) An award for any unique or special act or service under paragraph (a) of this section may be granted for any non-recurring employee or group contribution which is highly exceptional and unusually outstanding and which is beyond normal job responsibilities and performance standards.

(c) In granting cash awards under this section, the agency must prepare a written justification separate from the employee's performance plan or rating.

(d) Cash awards will be granted in accordance with the incentive award program provisions in Part 451 of this chapter, OPM instructions under that chapter, and the agency's incentive award program established under Part 451 of this chapter.

§ 540.111 Agency Performance Management Plans.

(a) Each agency with employees who are subject to the Performance Management and Recognition System shall establish a Performance Management Plan for administering 5 U.S.C. 4302a, 5 U.S.C. 5401-5410, and this part. Performance management plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal systems required under 5 U.S.C. 4302a.

(2) Performance Management and Recognition System plan(s) required by this part, including the manner by which

the distribution of the funds contained in the agency's performance award budget will be made.

(3) Requirements for communication to the agency's PMRS employees of the purpose of the Performance Management and Recognition System and how it works; and

(4) Requirements for training in the operation of the Performance Management and Recognition System for employees who are subject to that System and for Senior Executive Service members and other managers supervising PMRS employees.

(b)(1) Each agency covered by Part 540 of this chapter shall submit a Performance Management Plan to the Office of Personnel Management for review and approval. OPM will provide agencies with a Performance Management Plan Checklist, containing all the components necessary for approval of the PMRS Performance Management Plan.

(2) If major subcomponents of an agency propose to modify any element of the agency's plan that is included in the Performance Management Plan Checklist, or develop separate proposed plans based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(3) Agencies will be required to implement the provisions of an approved Performance Management Plan pertaining to their Performance Management and Recognition System employees not less than 120 days prior to the end of the agency's performance appraisal period.

(c) Agencies shall submit to OPM for approval any changes to their Performance Management Plans that modify any element of the agency's Plan that is included in the Performance Management Plan Checklist.

§ 540.112 Reports.

(a) So that the Office of Personnel Management can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System, including performance awards under 5 U.S.C. 5406 and cash awards under 5 U.S.C. 5407, each agency shall maintain such records and submit to OPM such reports as OPM may require.

(b) Each agency shall submit to OPM at the beginning of each fiscal year the estimated performance awards budget, including the funding level used, and such other data required by OPM to administer the Performance Management and Recognition System.

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

§ 595.102 [Amended]

17. In § 595.102, paragraph (b) is amended by removing the words "Merit Pay System" and inserting, in their place, the words "Performance Management and Recognition System."

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

18. In § 771.206, paragraph (c)(1)(xii) is revised to read as follows:

§ 771.206 Exclusions.

* * * * *

(c) *Matters excluded.*

(1) * * *

(xii) A general increase or merit increase, or the lack of a general increase or merit increase, under the Performance Management and Recognition System, or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C. chapter 54 and Part 540 of this chapter;

* * * * *

Authority: Pub. L. 98–615; 5 U.S.C. 4302a and 5409.

[FR Doc. 85–6941 Filed 3–22–85; 8:45 am]

BILLING CODE 6325–01–M

Federal Register

Monday
March 25, 1985

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Notice of Sale; Western Gulf of Mexico, Proposed Oil and Gas Lease Sale 102

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf; Notice of Sale; Western Gulf of Mexico, Proposed Oil and Gas Lease Sale 102

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The following is a proposed Notice of Sale for Sale 102 in the offshore waters of the Western Gulf of Mexico. This Notice is hereby published as a matter of information to the public.

Wm. D. Bettenberg,

Director, Minerals Management Service.

Dated: March 19, 1985.

Approved:

J. Steven Griles,

Deputy Assistant Secretary—Land and Minerals Management

BILLING CODE 4310-MR-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Notice of Sale
Western Gulf of Mexico
Proposed Oil and Gas Lease Sale 102

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be delivered in person to the above address during normal business hours (8:00 a.m. to 4:00 p.m., c.s.t.) until the Bid Submission Deadline at _____. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted on the day of Bid Opening, _____. Delivery by mail should be addressed to P.O. Box 7944, Metairie, Louisiana 70010, and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to _____. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m. _____. Bid Opening Time will be 9:00 a.m. _____ at the _____. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at _____ on _____.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 102, map number(s), map name(s), and block number(s)), not to be opened until 9:00 a.m., c.s.t., _____," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 102, NG 15-1, East Breaks, Block 701, not to be opened until 9:00 a.m., c.s.t., _____." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $150 or more per acre, or fraction thereof. All leases resulting from this sale will provide for a yearly rental payment of $3 per acre, or fraction thereof. All leases awarded will provide for a minimum royalty of $3 per acre, or fraction thereof. The bidding systems to be utilized for this sale apply to blocks or bidding units as shown on map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre, or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, MMS will utilize procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RD will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids for the sale. Bidders are referred to 30 CFR 218.155 (49 FR 8602, March 8, 1984).

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14):

(a) Outer Continental Shelf Leasing Maps--South Texas Set. This set of maps sells for $5.00.

Map 1	South Padre Island Area
Map 1A	South Padre Island Area, East Addition
Map 2	North Padre Island Area
Map 2A	North Padre Island Area, East Addition
Map 3	Mustang Island Area
Map 3A	Mustang Island Area, East Addition
Map 4	Matagorda Island Area

(b) Outer Continental Shelf Leasing Maps--East Texas Set. The following set of maps sells for $7.00.

Map 5	Brazos Area
Map 5B	Brazos Area, South Addition
Map 6	Galveston Area
Map 6A	Galveston Area, South Addition
Map 7	High Island Area
Map 7A	High Island Area, East Addition
Map 7B	High Island Area, South Addition
Map 7C	High Island Area, East Addition, South Extension
Map 8	Sabine Pass Area

(c) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14-3	Corpus Christi	(approved January 27, 1976)
NG 14-6	Port Isabel	(approved January 27, 1976)
NG 15-1	East Breaks	(approved January 27, 1976)
NG 15-2	Garden Banks	(approved December 2, 1976)
NG 15-4	Alaminos Canyon	(approved March 26, 1976)
NG 15-5	Keathley Canyon	(approved December 2, 1976)

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, bisected by administrative lines such as the Federal/State jurisdictional line, or the section 8(g) line, or a combination of such lines. In these cases the following supplemental documents to this Notice of Sale are available from the Gulf of Mexico Regional Office (see paragraph 14(a)):

(1) Western Gulf of Mexico Lease Sale 102 - Proposed. Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 102 - Proposed. Unleased Acreage of Blocks with Aliquots Under Lease.

(3) Western Gulf of Mexico Lease Sale 102 - Proposed. Unleased Blocks Split by the 8(g) Line.

(b) References to maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 102, Stipulations, Lease Terms, and Warning Areas, Proposed."

Map 2 entitled "Western Gulf of Mexico Lease Sale 102, Bidding Systems and Bidding Units, Proposed," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 102, Detailed Maps of Biologically Sensitive Areas, Proposed," pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their acreages appears on map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a), (b), and (c), except for those blocks or partial blocks described as follows:

(1)

WESTERN GULF OF MEXICO LEASE SALE 102
WESTERN GULF OF MEXICO LEASED LANDS

Descriptions of Blocks Listed Represent All Federal Acreage Leased Unless Otherwise Noted

S. Padre Island	N. Padre Island (continued)	N. Padre Island, East Addition (continued)	Mustang Island (continued)	Mustang Island (continued)	Mustang Island, East Addition (continued)
1031					
1032	919		769	A-12	
1039	924	A-33	777	A-14	A-124
1040	927	A-40	778	A-15	A-129
1049	928	A-41	780	A-16	A-135
1062	946	A-42	781	A-18	A-138
1063	947	A-45	782	A-19	A-139
1069	956	A-46	783	A-20	A-140
1070	958	A-51	784	A-21	A-151
1104-	965	A-53	787	A-22	A-152
(Landward of	966	A-57	788	A-23	A-153
8(g) line)	967	A-58	791	A-25	A-162
1111	968	A-59	798	A-26	A-164
1112	969	A-61	800	A-30	
1125	976	A-65	803	A-31	Matagorda Island
1133	999	A-66	804	A-36	
	1000-	A-72	805		487
S. Padre Island,	(Landward of	A-78	809	Mustang Island,	518
East Additon	8(g) line)	A-83	811	East Addition	519
	1006	A-84	813		520
1117	1007	A-93	814	734	526
A-62	1008		822	735	527
A-64	1021	Mustang Island	823	760	528
A-65			825	A-43	529
A-70	N. Padre Island,	727	827	A-51	554
A-71	East Addition	728	828	A-52	555
A-72		738	830	A-58	556
A-73	912	739	831	A-60	557
A-75	953	740	834	A-65	558
	970	742	835	A-83	565
N. Padre Island	974	743	836	A-84	566
	975	752	844	A-85	567
886	995	753	845	A-90	568
887	1011	754	846	A-94	569
888	1018	755	847	A-102	586
894	A-7	756	849	A-103	587
895	A-9	757	868	A-106	588
897	A-11	758	873	A-107	589
898	A-12	759	875	A-110	592
905	A-13	762	876	A-111	599
906	A-14	763	A-1	A-113	600
908	A-22	764	A-2	A-117	601
909	A-29	765	A-6	A-118	602
915	A-30	766	A-10	A-121	603
916	A-31	768	A-11	A-122	604

Matagorda Island (continued)

605
606
607
616
617
618
619
620
622
623
624
631
632
633
634-
(Seaward of
8(g) line)
635
636
638
639
640
649
651
652
653
654
655
656
657
663
664
665
666
667
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669
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696

Matagorda Island (continued)

697
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699
700
701
702
703
704
705
710
711
712
713
715
716
717
718
A-1
A-4
A-7

Brazos
335
341
342
364-
(Landward of
8(g) line)
376-
(Landward of
8(g) line)
378
397
398
399
412
415
417
435-
(Seaward of
8(g) line)
436
437
438
439
449
450
451
452
453
455

Brazos (continued)

457
466
475
476
478
479
488
489-
(Landward of
8(g) line)
490
491
492
494
497
498
501
502
504
510
512
514
515
517
530
534
535
550
551
552
578
585
608
615
A-3
A-7
A-9
A-10
A-16
A-17
A-19
A-20
A-22
A-23
A-24
A-28
A-30
A-33
A-34
A-37
A-38
A-39

Brazos (continued)

A-40
A-41

Brazos,
South Addition

A-47
A-50
A-52
A-53
A-54
A-65
A-66
A-67
A-68
A-70
A-73
A-74
A-76
A-78
A-79
A-89
A-102
A-105
A-118
A-119
A-132
A-133

Galveston

144
151
180
181
189 (SE¼)
190 (W½)
191-
(Portion seaward
of 8(g) line)
192
209
210
211
213
223
239
241
242-
(Landward of
8(g) line)

Galveston (continued)

243-
(Landward of
8(g) line)
255
257
270
271
272-
(Seaward of
8(g) line)
274
282
288-
(S½NE¼NE¼;
SE¼NW¼NE¼;
S½NE¼;
E½E½SW¼; SE¼)
289-
(SW¼NW¼NW¼;
W½SW¼NW¼;
SE¼SW¼NW¼;
SW¼SE¼NW¼;
SW¼; W½SE¼)
295-
(S½NE¼NE¼;
NW¼NE¼;
W½SW¼NE¼;
NE¼SW¼NE¼;
N½SE¼NE¼;
W½; W½NW¼SE¼;
S½SE¼)
296-
(NE¼;
NE¼NE¼NW¼;
S½NE¼NW¼;
S½SW¼NW¼;
SE¼NW¼;
N½S½;
NE¼SW¼SW¼;
N½SE¼SW¼;
N½SW¼SE¼;
SE¼SE¼)
298
300
301
302
303
304
313
318
319

Galveston (continued)

320
321
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326
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503
A-3
A-4
A-16
A-18
A-20
A-24
A-35
A-37
A-38
A-57
A-58

Galveston (continued)

A-84
A-97
A-99
A-111
A-113

Galveston,
South Addition

A-114
A-115
A-116
A-126
A-127
A-129
A-131
A-142
A-156
A-162
A-178
A-192
A-194
A-217
A-219
A-224
A-226
A-227
A-248
A-252
A-253

High Island

19
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High Island (continued)

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96
105
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111
113
114
115
116
117
133
134
135-
(N½; N½S½;
SW¼SW¼
W½SE¼SW¼;
NE¼SE¼SW¼;
N½S½SE¼)
136-
(E½; E½NE¼SW¼;
S½SE¼SW¼)
138
139
140
141 (E½)
142
143
154
155 (W½)
158
159
160-
(NE¼; NE¼NW¼;
E½SE¼NW¼;
N½SE¼;
N½SE¼SE¼)

High Island (continued)

161-
(NW¼NE¼NW¼;
S½NE¼NW¼;
W½NW¼;
SE¼NW¼;
NE¼NE¼SW¼;
W½NE¼SW¼;
NW¼SW¼;
NW½SW¼SW¼)
162
163
164
169
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A-3
A-6
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A-12
A-14
A-19
A-20
A-21
A-22
A-24

High Island (continued)

A-34
A-38
A-39
A-45
A-60
A-62
A-64
A-65
A-67
A-68
A-69
A-82
A-83
A-86
A-87
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A-90
A-100
A-103
A-119
A-120
A-122
A-123
A-124
A-129
A-131
A-132
A-139
A-141
A-142
A-149
A-152
A-155
A-156
A-157
A-161
A-162
A-165

High Island,
South Addition

A-411
A-412
A-413
A-414
A-415
A-416
A-417

High Island, South Addition (continued)

A-422
A-424
A-433
A-435
A-437
A-438
A-439
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A-441
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A-443
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A-502

High Island, South Extension (continued)

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A-506
A-507
A-508
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A-515
A-517
A-520
A-521
A-523
A-526
A-530
A-531
A-532
A-536
A-537
A-542
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A-578
A-579
A-582
A-585

High Island, South Addition (continued)

A-586
A-587
A-588
A-589
A-591
A-594
A-595
A-596

High Island, East Addition

39
45
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A-170
A-171
A-172
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A-174
A-176
A-178
A-179
A-181
A-185
A-192
A-193
A-194
A-198
A-214
A-215
A-231
A-236
A-237
A-240
A-241
A-244

High Island, East Addition (continued)

A-256
A-257
A-258

High Island, East Addition, South Extension

A-267
A-268
A-269
A-270
A-271
A-273
A-274
A-276
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A-330

High Island, East Addition, South Extension (continued)

A-332
A-334
A-335
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A-380
A-382
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A-385
A-388
A-389
A-392
A-393
A-395
A-396
A-399
A-400
A-401
A-402
A-403

Sabine Pass

17
18
40
44

Corpus Christi

569
570
700
743
744
920
921
964
965
1008

East Breaks

74
106
107
108
109
110
111
118
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122
123
127
128
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152
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168
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East Breaks (continued)

171
172
173
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217
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251
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East Breaks (continued)

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Garden Banks

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Garden Banks (continued)

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Garden Banks (continued)

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Garden Banks (continued)

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Port Isabel

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(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks:

Block A-375
Block A-398.

(3) Although currently unleased and shown on Official Protraction Diagrams or Leasing Maps as indicated, no bids will be accepted in the following areas:

(a) South Padre Island Area, Texas Map No. 1 (approved July 16, 1954)

Block 1163;

(b) South Padre Island Area, East Addition, Texas Map No. 1A (approved May 6, 1965)

Blocks 1162 through A-90;

(c) Port Isabel - NG 14-6, January 27, 1976

Blocks 948 through 968 and
Blocks 991 through 1012;

(d) Alaminos Canyon - NG 15-4, March 26, 1976

Blocks 925 through 942 and
Blocks 969 through 1009;

(e) Keathley Canyon - NG 15-5, December 2, 1976

Blocks 969 through 978.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on map 1 and will be on Form MMS-2005 (August 1982). Copies of the lease form are available from the Gulf of Mexico Regional Office. (Note: The lease term policy is currently being reviewed by the Department, and the terms of leases issued as a result of Sale 102 will be subject to any change in Department policy which may occur prior to the final Notice of Sale.)

(b) The applicability of Stipulations Nos. 1 through 4 that will be included in leases resulting from this sale is as shown on map 1 and supplemented by references in this Notice.

Stipulation No. 1--Protection of Cultural Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archaeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes a cultural resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archaeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operations so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RD that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the cultural resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of High Relief Banks.

(This stipulation will be included in leases located in the areas so indicated on maps 1 and 3 entitled "Western Gulf of Mexico Lease Sale 102, Stipulations, Lease Terms, and Warning Areas, Proposed," and "Western Gulf of Mexico Lease Sale 102, Detailed Maps of Biologically Sensitive Areas, Proposed," respectively. The high relief banks with their appropriate "no activity" isobaths are listed below.)

Bank Name	Isobath (meters)
Mysterious Bank[1]	74, 76, 78, 80, 84
Blackfish Ridge[1]	70
Dream Bank[2]	78, 82
Southern Bank[2]	80
Hospital Bank[2]	70
North Hospital Bank[2]	68
Aransas Bank[2]	70
South Baker Bank[2]	70
Baker Bank[2]	70
Big Dunn Bar[1]	65
Small Dunn Bar[1]	65
32 Fathom Bank[1]	52
Stetson Bank[1]	62
Claypile Bank[1]	50
Applebaum Bank	85
Coffee Lump[1]	Various
West Flower Garden Bank[4]	100 (defined by ŧŧŧ system)
East Flower Garden Bank[4]	100 (defined by ŧŧŧ system)
MacNeil Bank	82
29 Fathom Bank	64
28 Fathom Bank	85
Geyer Bank	85
Elvers Bank[3]	85
Bright Bank[3]	85
18 Fathom Lump[3]	85
Rezak Bank[3]	85
Sidner Bank[3]	85
Parker Bank[3]	85

[1] Low Relief Banks - only paragraph (a) of the stipulation applies.

[2] Other South Texas Banks - paragraph (c) of the stipulation shall not apply; for production and development operations only, the provisions of paragraph (b) shall apply in both the "1-Mile Zone" and the "3-Mile Zone."

[3] Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or."3-Mile Zone" in Western Gulf of Mexico.

[4] Flower Garden Banks - has a "4-Mile Zone" rather than a "3-Mile Zone"; in the "1-Mile Zone," paragraph (c)(2) of the stipulation shall apply in addition to paragraph (b); in the "4-Mile Zone," only paragraph (b) shall apply.

(a) No structures, drilling rigs, or pipelines will be allowed within the isobaths of the banks listed above.

(b) Operations within the area shown as "1-Mile Zone" on map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "3-Mile Zone" on map 3 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified, independent scientific personnel, and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Regional Director (RD) on a schedule established by the RD, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the RD shall require shunting as specified in subparagraph (1) above or other appropriate operational restrictions.

Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within each warning area, as shown on map 1 described in paragraph 12.)

Warning Areas Command Headquarters
Western Planning Area

Warning Areas	Warning Areas Command Headquarters
W-228	Naval Air Training Command Naval Air Station Corpus Christi, Texas
W-602	Director of Training Deputy Chief of Staff, Operations Headquarters Strategic Air Command Offutt AFB, Nebraska

(a) Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table above.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table above to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational Controls

The lessee agrees that, prior to operating, or causing to be operated on its behalf, boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the commander of the individual command headquarters listed in the table above. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

Stipulation No. 4--Suspension of Operations.

(This stipulation will be included in leases on blocks in water depths of 400-900 meters as shown on map 1 described in paragraph 12.)

The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan approved by the Regional Director pursuant to 30 CFR 250.34-2 and 250.12(b)(4)(c).

14. Information to Lessees.

(a) Information on Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit at the address stated in paragraph 2, either in writing or by telephone (504) 838-0519 or 838-0527. For additional information, contact the Regional Supervisor for Leasing and Environment at the address stated in paragraph 2 or by telephone at (504) 838-0755 or 838-0765.

(b) Information on Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.). U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

Prospective bidders should be aware of a Coast Guard study of port access routes in the Gulf of Mexico. Notice of this study was published in the Federal Register on March 19, 1984, at 49 FR 10127, with additional references on April 12, 1984, at 49 FR 14538, and on July 10, 1984, at 49 FR 28074. The purpose of this study was to evaluate alternative routing measures for the Galveston Approach area. In the Western Gulf of Mexico, the following blocks in the High Island Area (Maps 7 and 7A of the East Texas Set) were affected:

A-40 to A-48; A-52 to A-59; A-61; A-67 to A-68; A-70 to A-80; A-212 to A-214; A-219 to A-223.

The results of this Coast Guard study were published as a Notice in the Federal Register on March 11, 1985, at 50 FR 9682.

For additional information, prospective bidders should contact Lt. Commander F. V. Newman, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana (Phone: (504) 589-6901).

Prospective bidders should be aware of the MMS-permitted lightering facility located in the Mustang Island Area, Blocks 825, 826, and 827.

(c) Information on MOU with DOT on Pipelines. Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Information on Unitization. Bidders are advised that, in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate or a net profit share payment.

(e) Information on 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Information on Affirmative Action. Revision of Department of Labor regulations on Affirmative Action requirements for Government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action forms.

(g) Information on Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on map 1 described in paragraph 12. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi disposal area range from approximately 600 to 900 meters. Water depths in the East Breaks disposal area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(h) Information on Shallow Hazards. Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan.

Data collection by the lessee on a lease, and when necessary, off a lease, will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the RD to ensure that drilling, development, and production activities can be conducted in an acceptable manner with minimum risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RD either approves or requires modification to an exploration or development/production plan or application for permit to drill, or recommends that the Director, MMS, temporarily prohibit or suspend the conduct of exploration or development/production activities, according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RD to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

[FR Doc.,85-7015 Filed 3-22-85; 8:45 am]
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Federal Register

Monday
March 25, 1985

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 54

Fees for Federal Meat Grading and Certification Services; Interim Final Rule With Request for Comments and Proposed Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) revises the hourly fee rates for voluntary Federal meat grading and certification services. This change is being implemented on an interim basis without a prior proposal because of the Agency's need to increase these rates to cover the increased costs of providing service. These change are being published for comment as a means of providing full public participation in the rulemaking process. Additionally, AMS proposes to change the criteria for charging meat packers and processors for services received during certain premium hours in a document published elsewhere in this Part IV. This proposed change will be acted upon after receipt of comments.

DATES: Interim rule effective March 31, 1985; comments on the interim rule must be received on or before April 30, 1985.

ADDRESS: Written comments may be mailed to Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638-S; Washington, D.C. 20250. (For further information regarding comments, see "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin (202/382-1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

These actions were reviewed under the USDA procedures established to implement Executive Order 12291 and were classified as a nonmajor rule pursuant to sections 1(b)(1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. These actions also were reviewed under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that these rules will not have a significant economic impact on a substantial number of small entities. The changes in the hourly fee rates and the change in the criteria for charging for certain premium hours are necessary to recover the costs of providing voluntary Federal meat grading and certification services and reflect only a minimal increase in the current cost-per-unit of meat graded and/or certified. Additionally, the changes will make charges for services more commensurate with the actual cost of providing services during premium hours.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Washington, D.C., Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat and meat products which they desire. The Act also provides for the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees are designed to cover program costs for personnel salaries and fringe benefits, supervision, travel, training, and other administrative and overhead costs.

There are three hourly fee rates—base; premium (night, Saturday, and Sunday hours); and holiday—charged for grading and certification services. The base hourly fee rate is charged for all work performed between 6 a.m. and 6 p.m., Monday through Friday.

Currently, the premium hourly rate is charged for all work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time on Saturday or Sunday, except legal holidays. The holiday rate is charged for all work performed on legal holidays. The base hourly rate is designed to cover the base salaries and fringe benefits of employees and related supervisory travel, training, and administrative costs. The premium and holiday hourly rates are designed to cover the increased costs of providing services during certain hours of days which are not covered by the base hourly rate. These costs include overtime pay and additional supervisory costs for hours worked in excess of 8 hours per day, Monday through Friday; hours worked on Saturday or Sunday; night differential pay for hours worked between 6 p.m. and 6 a.m., Monday through Friday; and holiday pay for all hours worked on holidays.

The hourly fee rates are being increased to cover increased program operating costs. Since March 1, 1984, the date of the last hourly fee rate change, program operating costs have increased. The major contributing cost factors are the two salary increases for Federal employees mandated by Congress. A 3.5 percent pay increase became effective January 6, 1985, and a 0.5 percent pay increase was approved May 27, 1984, and made retroactive to January 1, 1984. In addition, the Agency's costs for employee social security and medicare taxes under the Federal Insurance Compensation Act (FICA) were increased by nearly 0.5 percent as of January 1, 1985. Employee salaries and fringe benefits are the major program costs, accounting for approximately 80 percent of the total operating expenses. Although operating efficiency has been improved, the program is unable to absorb the added costs of the May 27, 1984, and January 6, 1985, pay increases and the January 1, 1985, increase in FICA taxes without a corresponding increase in fees.

Since the last fee rate increase, the Agency has taken measures to reduce program operating costs and improve operating efficiency. For example, during the past year, two field supervisory positions and two Washington staff positions have been eliminated. In another cost reduction effort, the Agency has modified the formal training program for meat grading trainees and meat graders and reduced its length. Additionally, travel has been reduced, and programs are being automated to further reduce operating costs and improve efficiency. Although these changes have been implemented without adversely affecting the Agency's ability to maintain the effectiveness, integrity, and credibility of grading and certification services, the related cost-savings are not sufficient to offset the recent increases in employee salaries and fringe benefits. Any further reduction in employee supervision, training, or travel at this time could affect the Agency's ability to ensure the continued accurate and uniform application of U.S. grade standards and specifications nationwide. Any reduction in the accuracy and uniformity of services could have an adverse impact on the orderly marketing of red meat and on

the uniform identification of meat and meat products available to consumers.

The Agency also is proposing to change the criteria for determining when charges shall be at the premium hourly rate to include all hours of service in excess of 8 hours per day provided by any one grader to any user of the service between the hours of 6 a.m. and 6 p.m. Currently, users of the service are charged premium hourly rates for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time on Saturaday or Sunday, except on legal holidays. At the present time, users of the service are charged the base hourly rate for all hours worked between 6 a.m. and 6 p.m., Monday through Friday, regardless of whether the assigned grader is in an overtime status, i.e., hours worked in excess of 8 hours per day. Consequently, there are occasions when meat graders are being paid at an overtime salary rate while users of the service are being charged only the base hourly rate. For example, a plant utilizing a meat grader for 10 hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., currently is charged for 10 hours at the base hourly rate each day. The meat grader providing such services is paid for 8 hours at a base salary rate and for 2 hours at an overtime salary rate.

If the proposal to change the criteria for charging premium hourly rates is adopted, users of the service utilizing a grader in excess of 8 hours per day, between the hours of 6 a.m. and 6 p.m., will be required to pay the premium hourly rate for all hours in excess of 8 hours per day. As a result of this change, a plant utilizing a grader as described in the previous example would pay for 8 hours of service at the base hourly rate and 2 hours of service at the premium hourly rate. This proposed revision in charges will more equitably distribute the program's overtime costs by directly assessing premium hourly rate charges to those users of the service whose plant operational schedules require the service of one or more graders in excess of 8 hours per day during the specified time period. This change will not affect charges to applicants who receive service less than 8 hours per day but who receive it at the time of day when the assigned grader may be in an overtime status. These situations result from the order in which service is received rather than plant operating schedules which extend a grader's workday beyond 8 hours.

The Agency considered further increases in the base hourly rate to cover the added cost of providing services during premium hours as an alternative to changing the criteria for charging for premium hours. However, this alternative would result in an inequity of charges by requiring all users of the service to pay a portion of the program's premium hour operating costs, regardless of whether or not they used services during premium hours.

In view of the situations described above, the base hourly rate for voluntary Federal meat grading and certification services is increased from $25.60 to $26.40 and will be charged to users of the service utilizing a meat grader from Monday through Friday, between the hours of 6 a.m. and 6 p.m., except on legal holidays. The premium hourly rate is increased from $30.60 to $34.40. The hourly rate for holidays is increased from $51.20 to $52.80 and will be charged to users of the service for all hours of work performed on legal holidays.

Pursuant to the authority in 5 U.S.C. 553, it is found that any other public procedure and notice with respect to the revised hourly fee rates are impracticable and unnecessary, and good cause is found for making these amendments effective March 31, 1985, on an interim basis. A final rule will be promulgated after evaluation of comments received in response to this notice.

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meats, prepared meats, and meat products, is amended as set forth below:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.27(a) is revised to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees Based on Hourly Rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request, notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $26.40 per hour for work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $34.40 per hour for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday except on Federal legal holidays; and $52.80 per hour for all work performed on Federal legal holidays.

* * * * *

Done at Washington, D.C.: March 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-7057 Filed 3-22-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Change in the Method of Charging Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service proposes to change the criteria for charging meat packers and processors for services received during certain premium hours. This change will make charges for services more commensurate with the actual cost of providing service during certain premium hours.

DATES: Comments on this proposed rule must be received on or before April 30, 1985.

ADDRESS: Written comments may be mailed to Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, D.C. 20250. (For further information regarding comments, see "**Comments**" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, (202/382–1113).

SUPPLEMENTARY INFORMATION:

Interested persons are invited to submit written comments concerning this proposed amendment. Comments must be sent in duplicate to the Washington, D.C., Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the **Federal Register.** Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

In an interim rule published elsewhere in this Part IV, AMS is revising the hourly fee rates for voluntary meat grading and certification services. This proposed rule would change the criteria for charging meat packers and processors premium hours for the hours they utilize a grader in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays. For further background information and the Regulatory Impact Analysis, see the interim final document.

The proposed rule will be acted upon after evaluation of comments received in response to this notice.

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

Accordingly, it is proposed that the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meats, prepared meats, and meat products, be amended as set forth below:

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.27(a) is revised to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees Based on Hourly Rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request, notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $26.40 per hour for 8 hours or less of work performed between the hours of 6 a.m., and 6 p.m., Monday through Friday, except on Federal legal holidays; $34.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday except on Federal legal holidays; and $52.80 per hour for all work performed on Federal legal holidays.

* * * * *

Done at Washington, D.C.: March 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–7058 Filed 3–22–85; 8:45 am]

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federal register

Monday
March 25, 1985

Part V

Department of Energy

Bonneville Power Administration

Policy to Implement the Council-Recommended Conservation Surcharge; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

Policy To Implement the Council-Recommended Conservation Surcharge

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Policy and Request for Comment, *BPA File: CCS-1.*

SUMMARY: In accordance with the Northwest Electric Power Planning and Conservation Act, the Northwest Power Planning Council (Council) has developed model conservation standards (MCS) and recommended to the BPA Administrator that a surcharge be imposed on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not adopted, or on customers who have not adopted, the standards or other conservation measures which achieve savings comparable to the standards. BPA is requesting comment on a proposed policy to implement the Council-recommended conservation surcharge. The proposed policy focuses on certifying compliance with the model conservation standards and reviewing and evaluating alternative plans for achieving savings comparable to the model conservation standards. At the Council's request, exemptions to the conservation surcharge are not addressed at this time. BPA may revise this proposal to include certain exemptions after the Council has determined whether they wish to change *their surcharge recommendation.* BPA will seek additional public comment at that time.

At this time, the proposed policy does not address conversion standards for residential buildings converting to electric space heat and commercial buildings converting to electric space conditioning. BPA is awaiting further guidance from the Council regarding conversion standards and will incorporate these standards into this policy at a future date.

Responsible Official

Sue F. Hickey, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for developing the policy.

DATES: Public comment forums will be held in the following locations. Written comments must be received at the Public Involvement Office by 5 p.m., May 17, 1985.

Missoula, MT—April 8, 1985, Broadway Red Lion, 700 West Broadway, 1–4 p.m.
Burley, ID—April 9, 1985, Burley Inn, Patio II, 800 North Overland, 9 a.m.–12 p.m.
Seattle, WA—April 10, 1985, Conference Center, Room H, Seattle Center House, 9 a.m.–12 p.m.
Salem, OR—April 11, 1985, Location to be Announced, 9 a.m.–12 p.m.
Richland, WA—April 15, 1985, Federal Building Auditorium, 825 Jadwin, 9 a.m.–12 p.m.
Spokane, WA—April 16, 1985, River Front Ballroom D, Cavanaugh Inn at the Park, 9 a.m.–12 p.m.

ADDRESSES: Comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement Office, at the above address or 503–230–3478. Oregon callers outside of Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. Bart Evans, Division of Planning and evaluation, Office of Conservation, 1002 NE. Holladay Street, Portland, Oregon 97208, 503–230–5472.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. box 741 Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background of Policy

A. Introduction

The Pacific Northwest Power Planning and Conservation Act, 16 U.S.C. 839 et seq. (Pacific Northwest Power Act), provides for the development of cost-effective conservation as the first priority resources to be used in meeting the electric power needs of the region. Several mechanisms are provided to ensure that such conservation is developed. In addition to the BPA authority to acquire conservation or to grant billing credits for conservation that reduces its obligation to acquire other resources, the Council was directed to develop and include model conservation standards in its Northwest Conservation and Electric Power Plan (Plan). These standards are minimum efficiency requirements for new electrically heated residential structures, new commercial buildings, existing residential structures which convert to electric heat, and existing commercial buildings which convert to electric space conditioning.

Neither BPA nor the Council has authority to impose the model conservation standards. Implementation is dependent on the actions of State and local governments or utilities. The Pacific Northwest Power Act, however, does provide for a conservation surcharge on BPA's power sales rates. The Council may recommend, and BPA may subsequently impose, a surcharge on BPA's customers for those portions of

their loads within the region that are within States or political subdivisions which have not, or on customers which have not, implemented the model standards or otherwise achieved comparable savings.

B. Statutory Direction

The Pacific Northwest Power Act provides for the development of model conservation standards as part of the Council's Plan in sec. 4(e)(3). These standards, as described in sec. 4(f)(1), are to include standards applicable to new and existing structures. Such standards should reflect geographic and climatic differences and produce all power savings that are cost-effective for the region and economically feasible for consumers.

Once the standards are included in the Plan, sec. 4(f)(2) provides that the Council may recommend to the BPA Administrator the imposition of a surcharge on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the customers which have not, implemented the standards or other conservation measures that achieve energy savings comparable to the standards.

Section 4(e)(3)(G) provides for the Council to develop as part of its Plan a methodology for calculating such surcharges. As detailed in sec. 4(f)(2).

Such surcharges will be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

C. Actions by the Council

On April 27, 1983, the Council adopted the Northwest Conservation and Electric Power Plan. As required by the Pacific Northwest Power Act, the Council's Plan contains model conservation standards for newly constructed residential and commercial buildings, and for conversion of existing residential and commercial buildings to electric space heating and conditioning.

For new residential buildings that receive building permits on or after January 1, 1986, the model conservation standard, written as a performance standard for electric space heating, is as follows:

Bldg. type	Climate Zone 1 [1] (kWh/sq. ft./yr.)	Climate Zone 2 [1] (kWh/sq. ft./yr.)	Climate Zone 3 [1] (kWh/sq. ft./yr.)
Single-family	2.0	2.6	3.1
Multi-family	1.2	2.3	2.8

[1] Climate zones are based on the number of heating degree days experienced in a particular location (Zone 1: less than 6,000; Zone 2: 6,000 to 8,000; Zone 3: in excess of 8,000).

This standard also applies to electric space heating conversions in residential buildings that receive building permits on or after January 1, 1986. For electric space heating conversions in residential buildings that are granted building permits on or before December 31, 1985, a special standard, contained in Appendix L of the Plan, is applicable.

For commercial buildings that receive building permits on or after January 1, 1986, the Council has developed a model conservation standard that addresses electric space conditioning, lighting, and domestic hot water. This standard is a modified version of the most recent model energy code of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), ASHRAE 90–80. The standard includes heating, ventilating, and air conditioning equipment performance specifications, lighting budgets, and minimum building envelope efficiency requirements. The lighting budgets are identical to those now required by the City of Seattle's Energy Code, with the exception of office and retail buildings. The standard for office and retail buildings is equivalent to the office standard currently proposed by the California Energy Commission (1.5 watts per square foot plus an additional 1.5 to 3.0 watts per square foot for task and spot lighting).

Chapter 10 of the Council's Plan is a Two-Year Action Plan in which the Council identifies and discusses the tasks to be performed by BPA, the Council, and others in the region. Chapter 10 specifies that BPA is to develop a consistent procedure for certifying compliance with each model conservation standard (Action Items 2.3, 3.3, 6.4 and 7.3). In cases where a jurisdiction or utility elects not to implement the standards but rather to implement other conservation measures to achieve comparable savings (alternative plan), BPA is to develop a procedure for reviewing and evaluating these alternative plans to ensure that savings comparable to those of the model standards will be achieved (Action Items 2.4, 3.6, 6.6, and 7.4). These procedures were to be available by January 1, 1985. A number of other actions designed to facilitate the implementation of the model conservation standards is also specified.

By January 1, 1986, State governments, local governments, or utilities are to adopt and enforce the model conservation standards. Where such standards are not adopted, a plan to achieve comparable savings should be in place by January 1, 1986. Where neither action has occurred, the Council has recommended in sec. 25 of the Two-Year Action Plan that the Administrator impose a surcharge.

As required by the Pacific Northwest Power Act, the Council included a methodology to calculate surcharges as Appendix D of the Plan. The Council amended its original methodology in October 1984 following a series of public meetings. The amended methodology calls for a 10 percent surcharge to be levied on the monthly changes for power purchased and/or exchanged to serve a customer's non-complying load. See the appendix of this notice for the complete text of the Council's surcharge methodology.

D. Actions by BPA

BPA, through this notice, is proposing a policy for (1) certifying compliance with the model standards, (2) reviewing and evaluating alternative plans designed to achieve comparable savings, and (3) determining under what conditions BPA will not impose a Council-recommended surcharge (exemptions). At the request of the Council, this proposed policy contains no provision for exemptions from the Council recommendation to impose a surcharge. This request was made because the Council believes that many exemptions may be unnecessary if acceptable alternative plans can be developed. Sec. 4, contains a discussion of three alternative plans that BPA believes will provide savings comparable to the MCS enacted through building codes.

The Council will address the issue of exemptions following publication of this proposal. If the Council recommends exemptions, BPA will revise this proposal to include those exemptions recommended by the Council. BPA may also revise this proposal to include exemptions recommended by others. BPA will solicit comments on the proposed exemptions. At this time, customers, State and local governments, Indian tribes, and all other interested groups and individuals are requested to submit comments on all aspects of the proposed policy except for the issue of exemptions. BPA requests that comments focus on the issues identified in Sec. 4 of this notice, other issues that BPA may not have addressed, any clarifying information, and possible

ways of treating the issues in the final policy. Subsequent opportunities will be provided to comment on conditions under which BPA might exempt a utility from a conservation surcharge.

The resulting final policy will fulfill BPA's obligations under the terms of BPA's power sales contracts, the Two-Year Action Plan developed as part of the Council's Northwest Conservation and Electric Power Plan, and the Pacific Northwest Electric Power Planning and Conservation Act.

II. Activities to Date

BPA began the development of the policy in early 1984 through a series of informal meetings with State government, local government, utility, and Council representatives. BPA staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a **Federal Register** Notice of Intent to develop a policy to implement the Council-recommended conservation surcharge. The notice (49 FR 34891, September 4, 1984) was mailed to the public on August 28, 1984. The notice outlined what BPA believed would be the major sections of the policy, some of the issues that had surfaced during the preliminary discussions, and requested recommendations on the identification of other issues and how these issues might best be treated in the policy.

The notice requested that written recommendations be provided to BPA by October 1, 1984. A general information meeting was also scheduled for September 13. This meeting provided an opportunity for BPA staff to clarify the issues identified as well as the public process to be used in developing the policy. Additionally, the meeting offered an opportunity for recommendations to be made orally. Thirty-nine letters and numerous oral comments were received in response to the notice.

BPA elected to delay publication of a proposed policy until final Council action on amendment of the surcharge methodology. The Council voted October 31, 1984, to adopt an amendment which greatly simplified the surcharge calculation. (See Appendix.)

BPA received a number of recommendations concerning possible exemptions from a surcharge during the comment on the Notice of Intent. The Council, also, received numerous comments on exemptions during its amendment process for the surcharge methodology. As a result, the Council developed an issue paper examining possible exemptions from the MCS and from its recommendation to impose a surcharge. The issue paper analyzed three specific exemptions from the MCS. These were exemptions for: areas which have both low population density and little new building construction; utilities which have significant resource surpluses that are projected to continue over the next 20 years and have very low retail rates (less than the cost of energy saved by the MCS) which can be assured through the Council's planning horizon; and areas of the region outside of the four Northwest states. BPA provided the Council with copies of all comments received in response to the Notice of Intent, including those comments suggesting exemptions from BPA's imposition of a Council-recommended surcharge. At their meeting on November 28, 1984, the Council elected to defer action on exemptions on the basis that many of the exemptions might be unnecessary if adequate alternative plans could be developed. BPA was requested to proceed with the development of its policy and to address alternative plans. However, BPA was requested to delay a proposal on exemptions until after Council action on the issues.

Having reviewed the recommendations received from the public in response to BPA's Notice of Intent and the Council's actions on the surcharge methodology and exemptions, BPA has developed a proposed policy for implementing the surcharge. BPA also has included a detailed discussion of alternative plans in this notice (see Sec. 4). Written and oral comments are requested on the proposed policy, the issues identified, other issues that may be relevant, and the alternative plans.

III. Summary of Proposed Policy

The following summary is intended to provide the reader with an overview of the proposed policy. A discussion of the issues and how BPA is proposing to handle each follows in section 4.

Purposes—Section 1. This section lists the four purposes of the surcharge policy. The purposes are:

A. Provide a procedure by which customers may demonstrate that they, or the jurisdiction they serve, are in compliance with the model conservation standards;

B. Provide a procedure by which customers may demonstrate that they, or the jurisdictions they serve, have adopted acceptable alternative plans for achieving savings comparable to the model conservation standards;

C. Identify under what conditions BPA would exempt a customer from a conservation surcharge; and

D. Provide a procedure by which the Administrator will determine the level of the surcharge to be imposed.

Definitions—Section 2. Terms that are unique to this policy as well as more general abbreviations are noted.

Application of Policy—Section 3. This policy will be in effect upon publication of the final policy in the **Federal Register.** However, no surcharge will be imposed as a result of this policy until 1 year after publication of the final policy. Under the current schedule the revelant data for initial imposition of a surcharge would be October 1, 1986, or prior to 1 year after publication of the final policy, whichever is the later date.

The policy applies to all BPA customers that purchase or exchange power under any of the rate schedules that are subject to the surcharge. The question of what schedules are subject to the surcharge is an issue in the 1985 Wholesale Rate Case. In the initial 1985 Rate Case Proposal a surcharge provision was included in the Priority Firm, Firm Capacity and New Resources rate schedules.

Additionally, if the Administrator determines that (1) a given model conservation standard does not meet the Pacific Northwest Power Act requirement of regional cost-effectiveness, or (2) there is no increased system cost created by non-adoption or delay of the standard, then the policy relative to that standard shall be suspended for all customers.

BPA has reviewed the Council's analysis of the cost-effectiveness of the MCS and on the basis of current knowledge believes the MCS are cost-effective.

Exemptions—Section 4. Since the Administrator has discretion in the actual imposition of a surcharge, BPA may consider situations in which following the Council's recommendation to impose a surcharge would be inappropriate. However, at the request of the Council, this proposed policy includes no provision for such exemptions. Following a decision by the Council on whether or not Council will grant exemptions from the MCS or from its recommendation to impose a surcharge, BPA will revise this proposal and seek public comment.

Determination of Conservation Surcharge—Section 5. The determination of the conservation surcharge to be levied on a specific customer requires three findings: (1) What portion of the load is exempted; (2) what portion of the load is in a jurisdiction that has adopted, or in an area where the customer has adopted, the MCS; and (3) what portion of the

load is in a jurisdiction that has implemented, or in an area where the customer has implemented, an acceptable alternative plan. Those loads not covered by one of these findings are subject to the surcharge.

The surcharge, as determined by the Council's method, is 10 percent of the monthly charges for power purchased and/or exchanged under the applicable rate schedules to serve loads not otherwise exempted or covered by the MCS or an alternative plan. The final analysis, then, produces a percentage applied to all applicable purchases. As an example, if 25 percent of a utility's total load is located in a jurisdiction which has adopted the MCS, 20 percent in a jurisdiction with an approved alternative plan, and 5 percent exempted, then 50 percent of the utility's total load is not covered and is, therefore, subject to the surcharge. Using the Council's methodology, the 10 percent surcharge is multiplied by the 50 percent, resulting in a 5 percent surcharge applied to the total applicable utility purchases (10% x 50% = 5%).

Collection of Surcharge—Section 6. The surcharge for a specific utility will be billed monthly beginning the first billing period after a final decision is made to impose a surcharge. Surcharges will be applied as of October 1, 1986, (or 1 year after publication of the final policy, if that is a later date). Billings will be made retroactively to the application date from the date of the final surcharge decision for a specific utility. The surcharge will remain in effect until such time as the customer provides evidence and the Administrator has determined that the surcharge is no longer required under the terms of this policy, i.e., the load is: (1) Exempted; (2) covered by the MCS; or (3) covered by an alternative plan.

Verification of Load Exempted from Conservation Surcharge—Section 7. This section details the type of information that would be needed in order to verify that some portion of a customer's load qualifies for an exemption from the surcharge. At the Council's request, no exemptions are being proposed at this time. This section will be revised following Council action on exemptions. Public comment will be requested on any revision prior to adoption of a final policy.

Verification of Adoption of the Model Conservation Standards—Section 8. This section details the type of information that is needed in order for BPA to verify that the MCS have been adopted. BPA's customers are responsible for coordinating and providing the necessary information. Where a jurisdiction or customer adopts code language identical to that developed by the Council to be in compliance with the MCS, written notice of such action must be provided. The customer is to specify the percentage of total load which is served in the geographic area covered by the adoption of the MCS. Any modification of the Council-developed code language must be accompanied by an analysis which contains detail sufficient to verify the claimed energy performance. Entirely new code language must be accompanied by a rigorous energy analysis using the Council's heat loss methodology.

Verification of Alternative Plan—Section 9. Any customer proposing, or any customer serving a jurisdiction proposing, an alternative plan must provide BPA: (1) Sufficient information for BPA to determine the level of savings that adoption of the MCS would have provided, and (2) a detailed technical analysis of the savings associated with the conservation measures proposed. The alternative plan must provide savings comparable to the MCS and may not duplicate any savings already included in the Council's resource portfolio. Comparability will be judged by an equivalent number of annual average kilowatthours and reliability of the savings for each year in which MCS savings would have been available.

IV. Issues

On the basis of the recommendations received in response to BPA's Notice of Intent, a number of significant issues to be treated in this policy were identified. This proposed policy reflects BPA's current thinking on each issue. This section is intended to provide an overview of the issues, BPA's treatment of each issue within the policy, and the rationale for BPA's proposed approach.

A. Application of Policy

A number of the recommendations suggested were that a surcharge should not be imposed beginning January 1, 1986. Among the arguments presented were: (1) The standards have not been proven to be cost-effective to the region and economically feasible to consumers, (2) there will be no system cost caused by non-adoption or delay of the standards, and (3) January 1, 1986, fails to give sufficient time for jurisdiction or utilities to take action.

1. *Cost-Effectiveness/Feasibility.* Any model conservation standard developed must be both regionally cost-effective and economically feasible for consumers as mandated by the Pacific Northwest Power Act. BPA has reviewed the Council's determination of the cost-effectiveness of the MCS and on the basis of current knowledge believes the MCS are cost-effective. Based upon the Council's analysis, the costs of building to the standards would have to be considerably higher than projected or the performance considerably less than expected in order to change the Council's findings on this point.

Economic feasibility is not an issue that can be addressed on a regionwide basis since it depends on the rates faced by a given consumer. This issue may arise in the context of possible exemptions to the MCS or to the surcharge policy.

Policy Provision: The policy includes a provision, Sec. 3, to suspend the application of the policy relative to any standard which the Administrator determines is not regionally cost-effective. The question of economic feasibility for the consumer may be dealt with on an individual utility basis when the Council and BPA address the question of exemptions.

2. *System Cost.* The surcharge is included in the Pacific Northwest Power Act in recognition of the fact that failure to construct of energy-efficient buildings will cause the region to avoid the development of other, more costly, resources at some point in time. Some of the comments received reflect a belief that so long as the region is in a surplus power condition, a delay in the adoption of the MCS (2 years, for example) would not impose a cost on the system. The Council has analyzed the incremental system costs and concludes that a delay in adoption from January 1, 1986, to January 1, 1988, does impose a cost on the system. It has also been suggested that the Administrator should not impose a surcharge unless the costs to the system are in excess of some threshold. Although the proposed policy does not reflect this approach, BPA is seeking comments regarding this issue.

Policy Provisions: The policy includes a provision, Sec. 3, for suspending the application of this policy if the Administrator determines that there are no costs imposed on the system due to nonadoption of the MCS regionwide.

3. *Implementation Date* The final point concerns customers' and jurisdictions' needs for sufficient time to understand and implement the standards and to gauge BPA's policy relative to the imposition of a surcharge. Originally, BPA was to have a final policy in place by January 1, 1985. This would have allowed 12 months for customers and jurisdictions to take action. Due to delays on the surcharge methodology and exemptions, a final

policy is not likely before September 1985. A January 1, 1986, date for imposing the surcharge would provide little time to take appropriate actions under the final policy.

Policy Provisions: BPA expects that so long as the Council makes a determination on exemptions no later than June 1985, the September date for a final BPA policy is reasonable. BPA is proposing to determine compliance with the energy efficiency standards 1 year from the date of publication of a final surcharge policy. If the current schedule is followed, this would mean that the surcharge would be effective on October 1, 1986. All customers must have reported the status of MCS or alternative plan activities for themselves and the jurisdictions they serve by the applicable date. The initial determination of compliance, then, shall be based on the status as reported October 1, 1986, or 1 year from publication of a final policy. This date will provide sufficient time for customers and jurisdictions to plan their actions relative to the provisions of this policy. In no event, however, will BPA apply a surcharge prior to 1 full year after publication of this final policy in the **Federal Register.**

The policy compliance date does not affect the Council's January 1, 1986, deadline for adoption of the MCS. BPA does not have the authority to change the MCS adoption date. However, BPA does have the authority to adopt its own compliance date for purposes of imposing a surcharge.

B. Exemptions

BPA received numerous recommendations for exemptions from the imposition of surcharge. Such recommendations typically addressed problems related to the adoption and enforcement of building codes to implement the MCS. The Council developed an issue paper on the three most often requested exemptions. Public comment received by BPA and the Council indicated that several other potential exemptions existed. Rather than taking any specific action on exemptions, the Council elected to delay consideration until after BPA's public consideration of proposed alternative plans.

The Council believes that many of the recommended exemptions will be unnecessary if there are means of achieving the savings of the MCS other than through building codes—if there are acceptable alternative plans. At the council's request, BPA will not address exemptions in this proposal until after there has been public review and discussion of the alternative plans included in this section.

The Council will review the public comments BPA receives on the alternative plans before reaching a final decision on whether or not to adopt any exemptions. A final Council decision could be reached as early as June 1985. BPA will then revise this proposed policy to include any exemptions granted by the Council and other exemptions that BPA believes are warranted. This revised proposal will be made available for public review and comment. The timing of this review is dependent on Council action. However, if Council does act by June 1985, BPA will attempt to finalize a policy no later than September 1985.

Policy Provisions: This version of the proposed policy, while reserving a section for exemptions, provides for none. The proposal will be revised to address exemptions following Council action on the isue.

C. Verification of MCS

A key element in the policy is the process by which BPA will verify that a customer or jurisdiction has adopted and will enforce the MCS. The policy could place a heavy administrative burden on both BPA and its customers. The majority of recommendations indicated a desire for a process by which customers or jurisdictions would simply indicate whether they had adopted the MCS into building codes or utility service requirements. However, any entity wishing to independently develop code language must provide a detailed technical analysis of the savings.

Policy Provisions: Customers or juridictions adopting code language identical to that developed by the Council for the purpose of meeting the MCS are assumed to be in compliance. Any changes to the Council-developed codes require submission of a sufficiently detailed analysis to verify equivalent energy performance. The level of analysis needed is a function of the changes to the code. Minor, non-substantive changes would need little in the way of formal analysis. Major rewrites or entirely new code language must be accompanied by a detailed technical analysis including a performance evaluation making use of the Council's heat loss methodology.

D. Verification of Alternative Plans

The comparability of savings between an alternative plan and the MCS surfaced several issues. The issues are interrelated, though discussed individually.

1. *Source of Savings.* The Pacific Northwest Power Act requires that any alternative plan substitute other conservation measures for the MCS. Most recommendations on the issue were to allow any other sources of conservation savings. That is, while the MCS savings are from the residential and commercial sector, alternative plans could produce savings from any sector including industrial, agriculture, and direct-application renewable, as well as residential and commercial resources.

Policy Provisions: The proposed policy does not limit alternative plans to any particular conservation sector or exclude direct-application renewable resources. However, alternative plan savings may not be at the expense of a conservation resource already included in the Council's Energy Plan. The model conservation standards savings are in addition to the other conservation savings in the plan. Any alternative plan that simply substitutes another conservation resource from the plan for the MCS would leave the region short the energy projected from the MCS. Fuel switching, such as simply requiring the installation of gas-fired or other fossil fueled space heating equipment or alternative plans providing for generating resources is not acceptable.

2. *Timing of Savings.* The MCS savings can be characterized by when they occur: Time of day, time of year (seasonal), or through time. Few, if any, other conservation savings are likely to compare precisely with the savings from the MCS. Most recommendations were for alternative plans to produce equivalent savings measured on an annual basis.

Policy Provision: The proposed policy requires a projection of the annual MCS savings for the lifetime of the savings and then uses this as the comparison for the alternative plan. The projection of savings from an alternative plan must be compared to MCS savings over a duration which is equivalent to MCS savings. The two streams of savings must be levelized and may not vary by more than 10 percent annually. Anything more rigid would severely limit the flexibility of alternative plans.

3. *Cost of Savings.* Any party adopting an alternative plan will incur the costs of implementing that plan. At issue is whether BPA should require that the total costs of the alternative plan be equal to or less than the MCS. Development of alternative plans which are more expensive than MCS implementation imposes costs that need not be incurred. However, alternative plans will be adopted by State and local governments acting on behalf of their

citizens or utilities acting on behalf of their ratepayers. It can be expected that these entities will not incur costs that are unreasonable given the individual circumstances faced by the entity.

Policy Provisions: The proposed policy requires no analysis of comparability of cost.

4. *Reliability of Savings.* The conservation measures that typically would be included in a new home or commercial structure to achieve the energy performance associated with the MCS are reliable. Once installed, the conservation measures associated with the MCS achieve their projected savings with a fairly high degree of reliability. However, a building code, does not guarantee the proper installation of these measures. Therefore, less than 100 percent of the conservation potential may be realized.

Policy Provisions: Alternative plans must provide a level of savings that approximates that which the MCS are assumed to produce. The reliability of the alternative plan savings must reasonably approximate that of the MCS.

E. Responsibility for Data Reporting

The authority to adopt the MCS or alternative plans varies across the region. Building codes or other actions to achieve savings may be implemented by State governments, local governments, Indian tribes, and utilities. The surcharge, however, is imposed only on BPA's customers.

Policy Provision: The proposed policy requires that the utility submit information on who has or has not taken actions under this policy. This does not imply that the utility is required to adopt the standards or develop an alternative plan itself, though this may be possible, nor that the utility has the responsibility to ensure that the jurisdictions it serves have adopted. Rather, the utility is simply the vehicle for reporting the actions of others. Any jurisdiction taking action would be required to report the information to the utility in accordance with the requirements described in the policy.

F. Sample Alternative Plans

A number of parties have asked what specific actions might constitute an acceptable alternative plan. The Council deliberations on exemptions also indicated a need to provide some detail on the actions that might be taken to achieve comparable savings through means other than building codes. The following are three alternative plans that BPS believes achieve the savings of the MCS. These are not intended to be prescriptive paths for alternative plans, nor do they imply that there are no other acceptable alternative plans. Rather, BPA believes that these plans may be alternative ways of ensuring comparable energy efficiency in new buildings. BPA requests specific comments both on the general thrust and the mechanics of these alternatives. BPA intends that a jurisdiction or utility which implements one of the alternative plans would not be subject to a surcharge.

The following table illustrates the key elements of three BPA pre-approved alternative plans. A more detailed description of each of these alternative plans follows.

Pre-Approved Alternative Plans

Code	Incentive	Marketing
Alternative 1: No particular code level.	$2.00/sq. ft., $2.50/sq. ft., $3.00/sq. ft.	No requirement.
Alternative 2: No particular code level.	$1.00/sq. ft., $1.25/sq. ft., $1.50/sq. ft.	Super good cents.
Alternative 3: 2.5 kWh/ft² (Zone 1), 3.1 kWh/ft² (Zone 2), 3.6 kWh/ft² (Zone 3).	None	Do.

1. *Alternative Plan I. Incentives.*

One alternative plan would be the payment of a financial incentive by the utility to the builder and/or homebuyer. The incentive would be the same amount as the projected incremental cost of building to the MCS as opposed to building to current codes. Currently, the incentive level would be based on the following rates:

Climate Zone 1: $2.00 per square foot [1]
Climate Zone 2: $2.50 per square foot [1]
Climate Zone 3: $3.00 per square foot [1]

For Zone 1, this would amount to an approximate cost of $3000 per home to be paid by the utility for a 1500 square foot house. An additional maximum incentive of $800.00 for the cost of an air-to-air heat exchanger is required for all climate zones.

The compliance process for this alternative would be developed by the utility and would involve certification of house plans by a qualified engineer or architect. The engineer or architect would certify that energy use in the house would be equal to or less than the consumption in a house built to the MCS. No proof of savings is necessary under this alternative. BPA would reserve the right to "spot check" for compliance with the certification. BPA would also reserve the right to evaluate the utility's efforts to inform the building industry of the availability of the incentives. Based upon these reviews, BPA would determine whether the decision to accept the program as an alternative plan continues to be appropriate.

In summary, no particular building code or program marketing effort is required under this alternative. The financial incentive, paid by the utility, is the market vehicle. BPA assumes that the incentive will be sufficient to gain support from the home building community.

2. *Alternative Plan II. Incentives plus Marketing.*

A second alternative plan would involve the combination of a financial incentive with a formal marketing program.

As with the first alternative, the utility would provide an incentive to the builder and/or purchaser. The incentive under this alternative would be one half of the incentive provided under Alternative I and would be applied to individual climate zones. The level of this incentive is based on the anticipated penatration of a formal marketing program and an estimate of the homeowner's energy cost for the first year.

The formal marketing program, which the utility would provide in addition to the incentive is the current "Super Good Cents" program. The utility will be required to sign a Super Good Cents Program contract with BPA. BPA assumes the "Super Good Cents" certification process will assure compliance with the MCS.

This second alternative, a combination of an incentive with a structured marketing effort, would be applicable in areas with no particular building code and assumes a reduced level of incentive being provided by the customer.

3. *Alternative Plan III. Marketing plus an Efficient Code.*

This alternative would involve a combination of the "Super Good Cents" Program with an energy-efficiency code achieving less than MCS savings. The existing code would need to establish a maximum residential consumption level of 2.5 kWh/sq. ft. for Zone 1, 3.1 kWh/sq. ft. for Zone 2, and 3.6 kWh/sq. ft for Zone 3. As proof of consumption levels, a detailed technical analysis using the Council's heat loss methodology will be provided to BPA for the appropriate code. This plan would not require the utility to provide a financial incentive.

This approach assumes that the "Super Good Cents" marketing effort will create an increased level of awareness of more efficient construction

[1] Source: "Model Conservation Standards Reference Manual," Northwest Power Planning Council; 1984.

techniques by the building community as well as result in a more educated home buyer. This alternative will result in improved compliance with the existing code and an increased penetration of the MCS house, thereby achieving a savings level equal to that achieved by the MCS alone.

4. Any utility or jurisdiction adopting an alternative plan developed along the lines of those discussed here would be presumed under this policy to be achieving savings comparable to the MCS. The Administrator may, at any time, request documentation to verify that alternative plans are achieving savings levels equal to that assumed by the MCS.

G. Burden of Proof

The proposed policy requires or responds to a number of actions to be taken by jurisdictions or utilities. BPA believes, as did the majority of those commenting on this issue, that to the extent an entity takes actions that depart from the paths that have been developed for the region, it must assume the responsibility for verifying comparability of savings. Consequently, the adopting entity must verify that code language other than that developed by BPA or the Council will result in savings equal to the MCS. Analysis of the alternative plans, other than those described (and subsequently refined through the public process) herein, are the responsibility of the sponsor.

Policy Provision: BPA's role will be limited to reviewing the information submitted and determining whether that information supports a reasonable finding either of adoption of the MCS, an acceptable alternative plan, or exemption from the surcharge.

H. Public Involvement

BPA's power sales contracts and residential purchases and exchange agreements require that an opportunity be afforded to interested parties to present views, data, questions, and arguments regarding the imposition of a surcharge. In addition, several of the recommendations received were for meetings to be held in or near the service area of the utility being surcharged.

Policy Provision: Because the surcharge will be applied on a utility-specific basis, BPA believes that comment by the affected ratepayers should be facilitated. Therefore, before a final decision is made on the imposition of a specific surcharge, the utility and other interested parties will receive an initial written notice of BPA's determination. No less than 30 days will be allowed for review of BPA's initial determination. A public meeting will then be scheduled in the BPA Area or District office. Following an analysis of comments received, BPA will make a final determination. If BPA determines that a surcharge is appropriate, it will provide a final written notice to the utility.

V. Environmental Procedures

The proposal to add a conservation surcharge to certain of BPA's wholesale electric rates has been analyzed in an Environmental Assessment (EA) dated January 7, 1985, and titled "BPA Proposal to Apply the Council-Recommended Conservation Surcharge." This EA will be released for public review on March 26, 1985. The comment period will end May 31, 1985. BPA expects to issue a Finding of No Significant Impact if no substantial new information is raised in public review.

The environmental assessment is available for public review. Copies may be obtained by contacting the Public Involvement office at the address and phone numbers above.

VI. Policy to Implement a Council-Recommended Conservation Surcharge

Section 1. Purposes

The purposes of this policy are to:

A. Provide a procedure by which customers may demonstrate that they, or the jurisdiction they serve, are in compliance with the Model Conservation Standards (MCS);

B. Provide a procedure by which customers may demonstrate that they, or the jurisdictions they serve, have adopted acceptable alternative plans for achieving savings comparable to the model conservation standards;

C. Identify under what conditions BPA would exempt a customer from a conservation surcharge; and

D. Provide a procedure by which the Administrator will determine the level of the surcharge to be imposed.

Section 2. Definitions

A. *Alternative Plan.* An action or set of actions designed to achieve conservation savings comparable to those that would have been achieved by adoption and enforcement of the MCS.

B. *Customer.* For purposes of this policy, an entity which contracts for the purchase of power from the Administrator pursuant to the Pacific Northwest Power Act under a rate schedule identified as being subject to a surcharge.

C. *Jurisdiction.* For purposes of this policy, any unit of government including Indian Tribes, State governments, and local governments and municipal corporations.

D. *Model Conservation Standards.* The standards developed by the Northwest Power Planning Council as provided for in 4(e)(3)(A) of the Pacific Northwest Electric Power and Conservation Planning Act and included as Appendix J of the Northwest Conservation and Electric Power Plan as amended.

E. *Surcharge Methodology.* The methodology developed by the Northwest Power Planning Council as provided for in 4(e)(3)(G) of the Pacific Northwest Electric Power and Conservation Act and included as Appendix D (as amended) of the Northwest Conservation and Electric Power Plan.

F. *Total load.* The number of firm kWh's sold by a customer during the 12-month period prior to the application of this policy.

Section 3. Application of Policy

A. This policy shall be in effect upon publication as a final policy in the **Federal Register.**

B. All customer loads served by power purchased under BPA rate schedules identified as being subject to a surcharge are subject to this policy.

C. The Administrator shall suspend implementation of this policy with respect to a MCS if the Administrator determines:

1. That a model conservation standard proposed by the Council fails to satisfy the requirements of Section 4(f)(1) of the Pacific Northwest Power Act, or

2. That failure to adopt a model conservation standard regionwide imposes no cost on the system.

Section 4. Loads Exempted From Conservation Surcharge

A. Those portions of a customer's load:

[No exemptions have been included in the proposed policy. Following Council action on this issue, BPA will revise the proposal to incorporate any exemptions granted by the Council and may propose additional exemptions. Public comment will be requested on the revised proposal.]

Section 5. Determination of Conservation Surcharge

A. On or before the effective date of the surcharge each customer shall provide the Administrator with:

1. Evidence documenting what portion of its load is eligible for exemption as defined in Section 4;

2. Evidence documenting what portion of its load is in jurisdictions that have adopted the MCS;

3. Evidence documenting what portion of its load is in an area for which the customer has adopted the model conservation standards;

4. Evidence documenting what portion of its load is in an area subject to an alternative plan adopted by a jurisdiction; and

5. Evidence documenting what portion of its load is in an area subject to an alternative plan adopted by the customer.

B. Such evidence shall be provided according to the requirements of sections 7, 8, and 9.

C. Not less than 30 days prior to a final decision on the imposition of a surcharge the Administrator shall provide written notice to the customer including a determination of:

1. That percentage of the customer load found to be exempt (A_1%),

2. That percentage of the customer load found to be covered by the model conservation standards as of effective date of surcharge (A_3%),

3. That percentage of the load found to be covered by an acceptable alternative plan as of effective date of surcharge (A_3%),

4. That percentage of the load proposed to be surcharged (100—(A_1 + A_2 + $_3$% = B%), and

5. The level of the surcharge (B% × 10%).

D. The resultant level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the surcharge methodology, and is applied subsequent to any other rate adjustments.

E. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 5.C. and 5.D.

F. Such comments may be made in writing or orally at a public meeting convened for this purpose by the appropriate BPA Area or District office.

G. Following receipt and evaluation of such comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning January 1, 1987, the Administrator shall review the findings made in Sections 5.C and 5.D when either the customer or a jurisdiction served by the customer has taken an action that affects these findings.

I. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

J. At any time the Administrator may request documentation to verify that findings made in Section 5.C. and 5.D. are appropriate. If the Administrator determines that such findings are no longer appropriate, and that a surcharge or an increased surcharge should be imposed, appropriate opportunity for public review and comment will be made available prior to a final decision. Such surcharges, or increased surcharges, may be made retroactive to the date compliance is found to have been inadequate.

Section 6. Collection of Surcharge

A. The surcharge shall be applied to all power purchases made under applicable BPA rate schedules beginning 1 year after the publication of the final surcharge policy.

B. Those customers receiving a final written notice of a load subject to the surcharge shall be billed for the surcharge beginning the first full billing period following issuance of such notice.

C. Any power purchases made on or after the effective date of the surcharge, but before receipt of final notice finding the load to be subject to a surcharge, shall be retroactively billed to the effective date of the surcharge.

D. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

E. The collection of the surcharge as determined in Section 5 shall continue until the Administrator determines by way of new information presented that the surcharge is no longer required under the terms of this policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such finding.

Section 7. Verification of Load Exempted From Conservation Surcharge

[This section shall be revised upon consideration of exemptions by the Council and may be revised to reflect additional proposed exemptions.]

A. Customers requesting an exemption under section 5 shall provide the Administrator the following information:

1. The exemption as defined in section 4.

2. The percentage of load which is to be considered for the exemption.

B. The customer must provide the Administrator with supporting documentation sufficient to verify that the exemption is applicable and that percentage of load claimed for exemption is accurate.

Section 8. Verification of Adoption of the Model Conservation Standards

A. Any customer serving a jurisdiction that has adopted, or any customer that has adopted, the model conservation standards shall provide the Administrator the following information:

1. A description of the institutional mechanism by which the standards are to be implemented;

2. A copy of the standards as adopted including a statement of expected energy performance; and

3. A statement signed by an appropriate official certifying that such action has been taken and that the jurisdiction intends to enforce such action.

B. Any jurisdiction or customer adopting a building code or a service requirement as the equivalent of the model standards that in wording or requirements varies from code language approved by the Council shall provide the Administrator with a copy of the code or service requirement with an analysis of the energy performance of the adopted code or service requirement, a description of the institutional mechanism by which the standard is to be implemented, and a statement signed by an appropriate official certifying that the MCS has been adopted and that the jurisdiction or customer intends to enforce the MCS.

1. The detail of the submission must be sufficient to allow for an independent review of the code or service requirement and the resulting energy performance.

2. Energy performance shall be verified through use of the Council's heat loss methodology.

Section 9. Verification of Alternative Plan

A. Any customer serving a jurisdiction that has adopted, or any customer that has adopted, an alternative plan shall provide the Administrator with the following information:

1. A description of the BPA pre-approved alternative plan as selected for implementation in the jurisdiction; or

2. A detailed description of the conservation measure or measures that will be undertaken; and

3. A detailed description of the institutional mechanism that will be used to implement the alternative plan; and

4. A detailed technical analysis of the electric energy that will be saved through the adoption and implementation of the described alternative plan; and

5. A statement signed by an appropriate official that such plan has been adopted must accompany the descriptive material.

B. Any customer serving a jurisdiction that has adopted, or any customer that has adopted, an alternative plan, shall provide the Administrator with sufficient supporting information to determine the level of savings that would have been achieved if the model conservation standards had been adopted including:

1. The projected number of new residential structures;

2. The projected number of square feet of new commercial floor space;

3. The climate zone, as defined to the Council; and

4. The customer's projection of the savings that would have been achieved by the MCS.

C. The above information shall be provided for each year during which the alternative plan is to provide savings comparable to the model conservation standards.

D. Where this information is not available or is in doubt, BPA shall determine the level of savings that would have occurred had the MCS been adopted through use of the values included in the Council's surcharged methodology.

E. The customer must provide evidence that the savings that are achieved through the alternative plan:

1. do not displace resources already included in the Council's Energy Plan; and

2. can be expected to be reliable and available at the same point in time and for the same or longer period of time as those of the model conservation standards.

Issued in Portland, Oregon, on March 8, 1985.

Robert E. Ratcliffe,

Acting Administrator.

Appendix—Northwest Power Planning Council Surcharge Methodology

The following methodology for calculating surcharges was adopted by the Northwest Power Planning Council on October 31, 1984.

Section 4(f)(2) of the Act provides for Council recommendation for surcharges on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to the model conservation standards. The Council is responsible for drafting a "methodology" for the calculation of surcharges. The Council, in Action 25 of Chapter 10 of this Plan, has recommended to the Administrator that he impose a surcharge on customers serving jurisdictions which do not adopt the model conservation standards or achieve comparable savings. The purpose of the surcharge is twofold: (1) to recover costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve comparable savings, and (2) to provide a strong incentive to utilities and State and local jurisdictions to adopt and/or enforce the standards or comparable alternatives. The following is the "methodology" for calculating surcharges:

A. The following model conservation standards must be adopted or comparable savings must be achieved in order to avoid surcharges:

- MCS for new residential buildings, Action 2;
- MCS for new commercial buildings, Action 6;
- MCS for conversion to electric space heat in residential buildings, Action 3; and
- MCS for conversion to electric space conditioning in commercial buildings, Action 7.

B. The Administrator shall identify those customers, States, or political subdivisions which have not:

1. Implemented each of the model standards listed in paragraph 1; or

2. Achieved comparable savings of electricity through other conservation methods, such as utility electric service requirements, incentive programs or rate designs.

C. The surcharge shall then be calculated by the Bonneville Administrator as follows:

1. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and is not exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of all firm power purchased from Bonneville under the Power Sales Contract.

2. If the customer is not purchasing firm power from Bonneville under a Power Sales Contract, but is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of the power purchased from Bonneville in the exchange.

3. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and also is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be (a) 10 percent of the cost to the customer of firm power purchased under the Power Sales Contract *plus*, (b) 10 percent of the cost to the customer of power purchased from Bonneville in the exchange multiplied by the fraction of the utility's exchange load that is served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculation, the portion of a utility's exchange resource that is purchased from Bonneville and already surcharged under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

4. If only a portion of a utility's service area has not adopted the model standards or achieved comparable savings, the surcharge calculated under a, b, or c above is to be multiplied by the non-complying jurisdiction's share of the utility's total load.

5. The surcharge shall be removed when model conservation standards have been adopted and enforced or alternative programs, estimated by the Administrator in consultation with the Council to save an equivalent amount of electricity, have been implemented.

D. A utility electric service requirement that results in construction of electrically space conditioned buildings which are the equivalent of buildings in compliance with the model conservation standards constitutes an alternative plan that achieves comparable electricity savings. The Council intends to continue analyzing alternatives to building codes to achieve the construction of energy-efficient buildings to obtain cost-effective resources for the region.

E. Any entity that chooses not to adopt a particular model conservation standard within the allotted period of adoption and wishes to avoid a surcharge must declare, before that period expires, how it intends to achieve comparable savings, In addition, that entity must indicate how it intends to demonstrate attainment of comparable savings.

To assist Bonneville in estimating comparable electricity savings from alternative plans, the entity should

present its best estimate of new residential and commercial building construction in the non-complying jurisdictions within its service territory. Bonneville shall determine, in consultation with the Council, whether the alternative conservation plan of an entity will achieve comparable savings. When determining electricity savings that would have occurred had the standards been adopted, jurisdiction-specified weather data and construction estimates, where available, should be used along with the Council's residential and commercial heat loss models.

The Council recognizes that in many cases data will not be available. In these cases Bonneville should rely on average electricity savings estimated by building type and climate zone and included in the Plan. For residential buildings, Bonneville should assume the following regarding houses built to the model conservation standards: (1) Houses in climate zone 1 would save, on average, 5,130 kWh per year; (2) houses in climate zone 2 would save, on average, 8,508 kWh per year; and (3) houses in climate zone 3 would save, on average, 7,830 kWh per year. For commercial buildings and where good estimates are not available for the number of new houses, the savings should be determined by multiplying total expected regional average megawatt savings by sector from the standards, as shown in the Plan, by the utility's share of total regional load in the applicable sectors. Estimates of savings from conversion standards should be made on a case-by-case basis. The Council recognizes that these estimates will be difficult to make, but also that estimated savings from conversion standards probably will be small relative to savings from building standards. The Council will work with Bonneville on these estimates as requested.

If only a portion of a utility's service area has not adopted the standards, the lost electricity savings calculated in the above paragraph should be multiplied by the non-complying area's share of the utility's total applicable load.

If the Bonneville Administrator determines that the alternative plan will not achieve comparable savings, he shall notify the entity that its alternative plan has been judged to be not equivalent to the model conservation standards and that Bonneville will begin adding a surcharge to the entity's bill on a date certain. The surcharge will be calculated as described in Paragraph 3 of this method. If subsequent modifications to the entity's alternative plan bring it into compliance with the stated goals of the standards, then the surcharge shall be removed.

A general method of determining the electric energy savings of an alternative conservation plan shall be developed in consultation with the Council and included in Bonneville policy to implement the surcharge. Also, a method shall be included in the policy for terminating the surcharge once model standards have been adopted and enforced or comparable savings have been achieved.

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1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
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5 Parts:		
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